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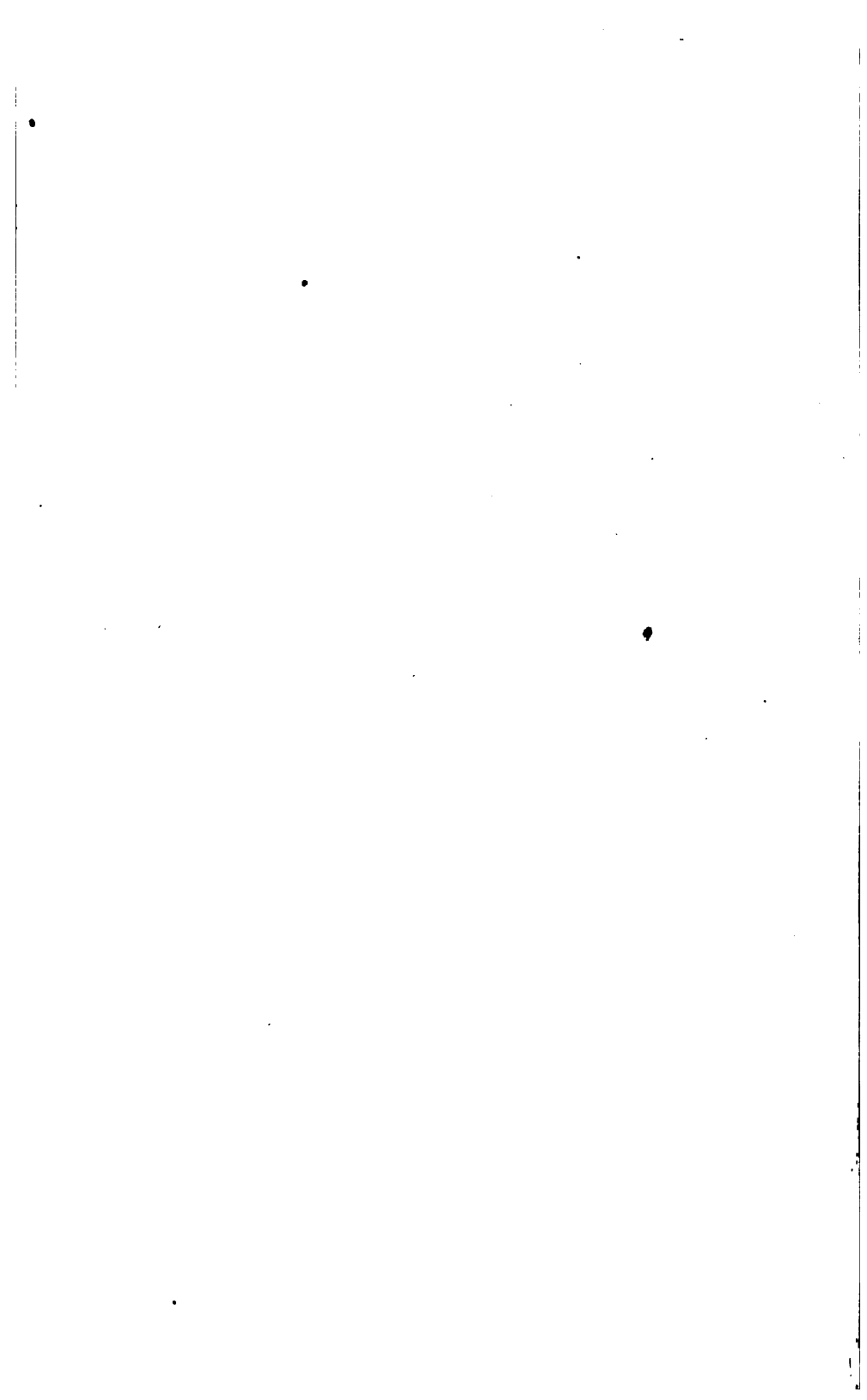
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A MANUAL *cf*
OF THE
BUSINESS CORPORATION LAW
OF
MASSACHUSETTS

BY
CHARLES N. ^{Nathan}HARRIS
AND
GROSVENOR CALKINS
OF THE BOSTON BAR

BOSTON
LITTLE, BROWN, AND COMPANY
1908

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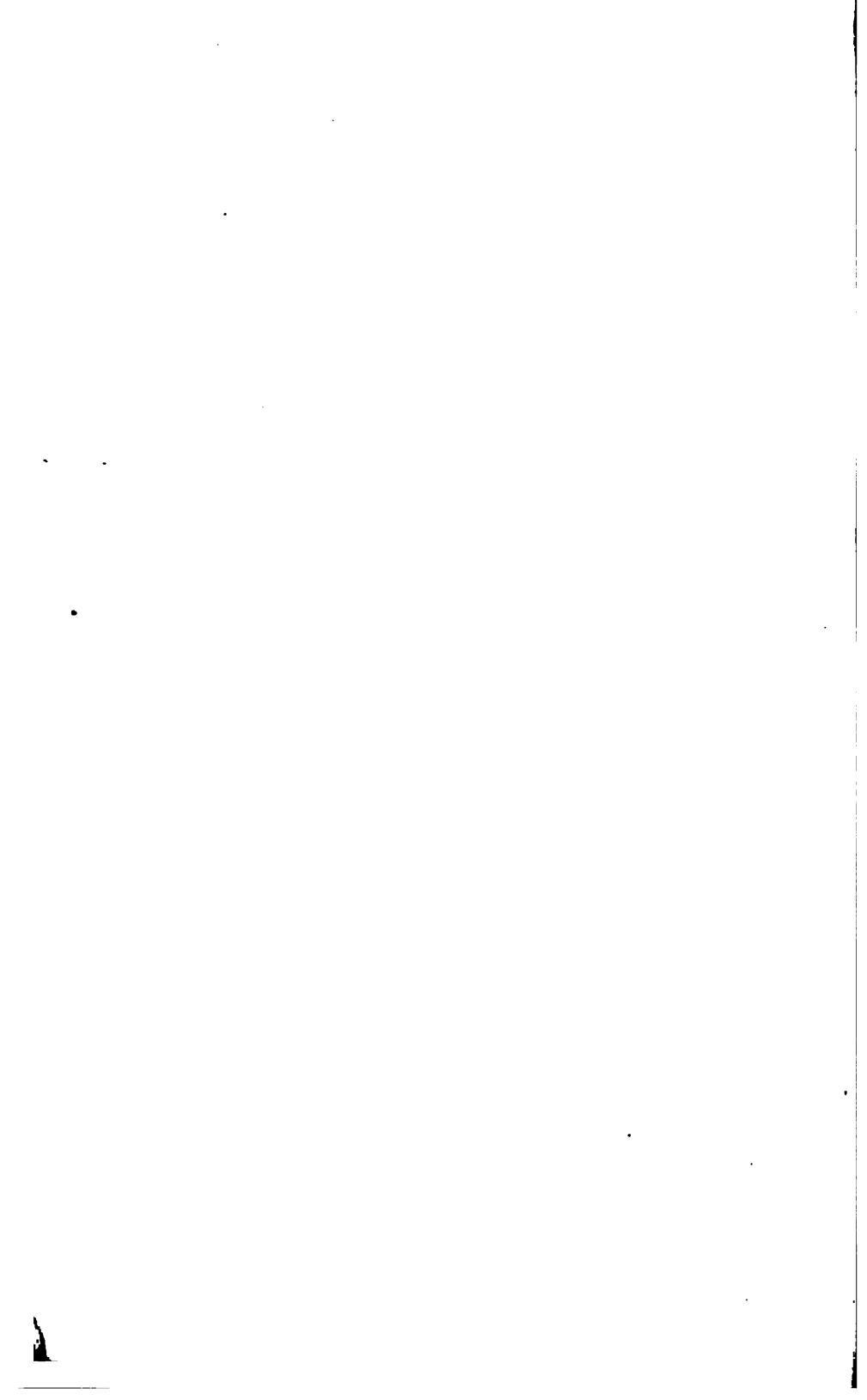
PREFACE

THIS Manual contains the text of the Massachusetts Business Corporation Law of 1903, and, following each section, concise notes of such decisions upon the effect of former statutes relating to corporations as may aid in the construction and interpretation of the new act.

In the second chapter, such miscellaneous provisions of the Revised Laws are collected as are applicable to corporations which are subject to the Business Corporation Law.

The Appendix contains the official forms prescribed by the Commissioner of Corporations and other forms which may be useful in the organization and management of corporations.

Boston, October, 1903.



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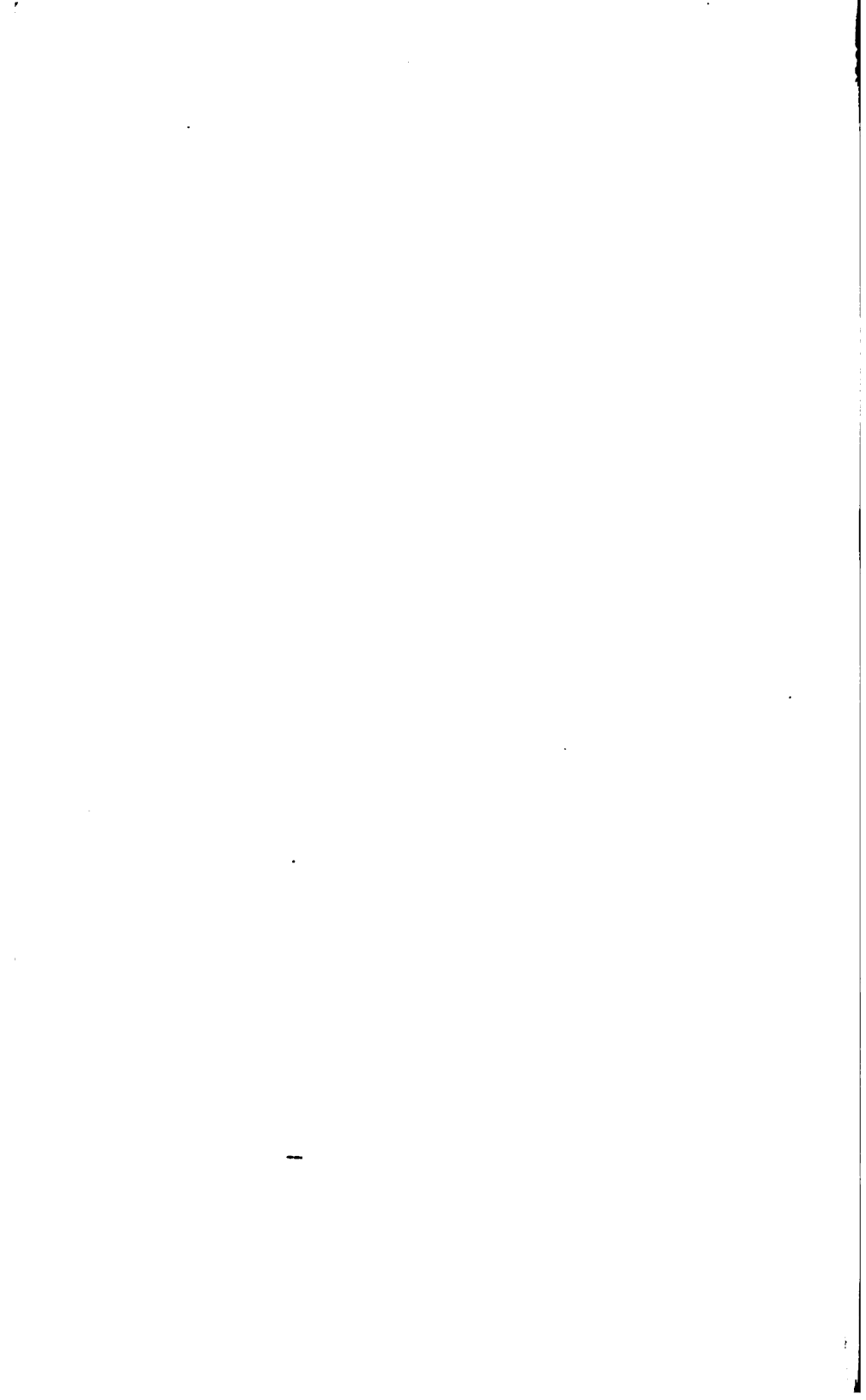


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THE
BUSINESS CORPORATION LAW
OF
MASSACHUSETTS.

CHAPTER I.

THE BUSINESS CORPORATION LAW.

THE Business Corporation Law of Massachusetts is contained in Chapter 437 of the Acts of the year 1903. It is here reprinted in full as follows:—

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GENERAL PROVISIONS.

SECTION 1. Title and application of act. — This act may be cited as THE BUSINESS CORPORATION LAW. It shall, except as herein otherwise provided, apply

(a) To all corporations having a capital stock and established for the purpose of carrying on business for profit heretofore or hereafter organized under general laws of the commonwealth.

(b) To all such corporations heretofore created under special laws of the commonwealth, except so far as its provisions are inconsistent with the provisions of any such special laws enacted before the eleventh day of March in the year eighteen hundred and thirty-one as are not subject to amendment, alteration or repeal by the general court.

(c) To all such corporations hereafter created under special laws of the commonwealth so far as its provisions are consistent with the provisions of said special laws.

It shall not apply to corporations organized under general or special laws of this commonwealth for the purpose of carrying on within the commonwealth the business of a bank, savings bank, co-operative bank, trust company, surety or indemnity company, safe deposit company, insurance company, railroad or street railway company, telegraph or telephone company, gas or electric light, heat or power company, canal, aqueduct or water company, cemetery or crematory company, or to any other corporations which now have or may hereafter have the right to take or condemn land or to exercise franchises in public ways granted by the commonwealth or by any county, city or town. But the provisions of this section shall not be construed to

4 RIGHTS AND LIABILITIES OF EXISTING CORPORATIONS.

prohibit the organization of a corporation under the provisions of this act for the purpose of carrying on any lawful business outside of this commonwealth.

Scope of the act. — By the provisions of Section 1, the act applies not only to corporations of the classes therein described which have been organized under the general laws, but also to corporations which have been created by special acts of the legislature, except such corporations as were chartered prior to March 11, 1831, whose charters contained no provision authorizing their amendment, alteration or repeal; and it also applies to corporations existing when it took effect as well as to such as may be hereafter created.

SECTION 2. Rights and liabilities of existing corporations. — Corporations organized under general laws shall be subject to the provisions of all laws hereafter enacted which may affect or alter their corporate rights or duties or which may dissolve them; but they shall, notwithstanding their dissolution, be subject to the provisions of sections fifty-two and fifty-three. Such amendment, alteration or dissolution shall not take away or impair any remedy which may exist by law, consistently with said sections, against such corporations, their stockholders or officers for a liability previously incurred. The charters of all corporations which are subject to the provisions of this act and which have been incorporated by special law since the eleventh day of March in the year eighteen hundred and thirty-one and of all such corporations as may be hereafter incorporated by special law shall be subject to amendment, alteration or repeal by the general court. Corporations of the kind which are subject to the provisions of this act, and which were incorporated by special law before such date, may, by amendment to their certificate of organization,¹

¹ See Appendix, Form 1.

adopted as provided in section forty, and filed as provided in section forty-one, reorganize under this act, and thereupon and thereafter, they shall be governed in all respects by its provisions. *Rev. Laws*, c. 109, § 3.

Amendment, alteration or repeal of charters. — The St. 1880, c. 81, passed March 11, 1881, enacted :

That all acts of incorporation, which shall be passed after the passage of this act, shall at all times hereafter be liable to be amended, altered, or repealed at the pleasure of the legislature, and in the same manner as if an express provision to that effect were therein contained; unless there shall have been inserted, in such act of incorporation, an express limitation as to the duration of the same.

This act, except the last clause, has been re-enacted, with but slight changes in phraseology, in all subsequent revisions of the statutes. *Rev. Sts.* c. 44, § 23; *Gen. Sts.* c. 68, § 41; *Pub. Sts.* c. 105, § 3; *Rev. Laws*, c. 109, § 3.

It has been, as was stated by GRAY, J., in *Commissioners on Inland Fisheries v. Holyoke Water Power Co.*, 104 Mass. 446, 451, "as much a part of all charters since granted as if inserted therein; and was manifestly adopted with the intention of reserving for the future a fuller parliamentary or legislative power than would otherwise be consistent with the effect to be allowed to the special terms of particular charters, under the judicial construction of the constitutional prohibition against impairing the obligation of contracts. The extent of the power reserved by such an enactment has been the subject of some diversity of judicial opinion, and a definition of its extreme limit is not necessary to this case. It is sufficient now to say that it is established by adjudications which we cannot disregard, and the principles of which we fully approve, that it at least reserves to the legislature the authority to make any alteration or amendment in a charter granted subject to it, that will not defeat or substantially impair the object of the grant, or any rights which have vested under it, and that

the legislature may deem necessary to secure either that object or other public or private rights.”

Ibid. — A legislative reservation of power to repeal a charter for a violation of its provisions or other default is not unconstitutional as being a reservation of judicial powers. *Crease v. Babcock*, 23 Pick. 334.

Ibid. — Subscriptions to the capital stock of a railroad corporation will not be defeated by a subsequent amendment of its charter by which the time for completing its road is extended. *Agricultural Branch R. R. Co. v. Winchester*, 13 Allen, 29.

Ibid. — If the legislature has entered into a solemn and formal contract exempting a corporation from making and maintaining a fishway in or around its dam upon indemnifying all persons whose rights of fishery were injured, and the corporation has executed its contract by payment of the damages, the legislature cannot thereafter, without any change of circumstances, under its authority to amend and alter the corporate charter, pass a law requiring the corporation to make and forever maintain such a fishway. *Commonwealth v. Essex Co.*, 13 Gray, 239. But if a corporation is authorized to construct a dam upon payment of damages to the owners of fishing rights above, and, although not exempted by its charter from constructing a dam without a fishway, does construct such a dam, thereby impairing fishing rights below for which no compensation was made or provided, it may be constitutionally required by the legislature to construct a fishway in the dam. *Commissioners on Inland Fisheries v. Holyoke Water Power Co.*, 104 Mass. 446.

Ibid. — An act levying a tax on the stock of domestic corporations which is owned by non-residents, or requiring such corporations to reserve and pay into the treasury of the commonwealth a certain portion of all dividends declared by them on shares of non-resident stockholders, cannot be supported as an exercise of the reserved legislative power to amend charters. *Oliver v. Washington Mills*, 11 Allen, 268, 282.

Ibid. — For other cases in this commonwealth in which the act reserving the power of amendment, alteration, or repeal has been held constitutional or has been acted on, see *Roxbury v. Boston & Providence R. R. Co.*, 6 Cush. 424; *Massachusetts General Hospital v. State Mutual Life Assurance Co. of Worcester*, 4 Gray, 227; *Fitchburg R. R. Co. v. Grand Junction, etc. Co.*, 4 Allen, 198; *Durfee v. Old Colony & Fall River R. R. Co.*, 5 Allen, 230; *Agricultural Branch R. R. Co. v. Winchester*, 13 Allen, 29; *Commonwealth v. Eastern R. R. Co.*, 103 Mass. 254; *Mayor and Aldermen of Worcester v. Norwich & Worcester R. R. Co.*, 109 Mass. 103; *Parker v. Metropolitan R. R. Co.*, 109 Mass. 506; *Metropolitan R. R. Co. v. Highland St. R. R. Co.*, 118 Mass. 290; *Worcester & Nashua R. R. Co. v. Railroad Commissioners*, 118 Mass. 561, 568; *Thornton v. Marginal Freight Railway Co.*, 123 Mass. 32.

The statutory reservation of the power of alteration, amendment, or repeal has been considered in numerous adjudications of the Supreme Court of the United States and of the highest courts of other States; but, in the cases of *Sherman v. Smith*, 1 Black, 587; *Pennsylvania College Cases*, 13 Wall. 190; *New Jersey v. Yard*, 95 U. S. 104; *Sinking Fund Cases*, 99 U. S. 700; *Close v. Glenwood Cemetery*, 107 U. S. 466; *New York & New England R. R. Co. v. Bristol*, 151 U. S. 556; *Citizens' Savings Bank v. Owensboro*, 173 U. S. 636; *Durfee v. Old Colony & Fall River R. R. Co.*, 5 Allen, 230; *McLaren v. Pennington*, 1 Paige, 102; *In the matter of the Reciprocity Bank*, 22 N. Y. 9; *Northern R. R. Co. v. Miller*, 10 Barb. 260; *Miller v. New York & Erie R. R. Co.*, 21 Barb. 513; and *Sage v. Dillard*, 15 B. Mon. (Ky.) 340, the power was expressly reserved in the charter itself which was under consideration. In the following cases, the charters contained provisions subjecting them to the operation of the general law: *Greenwood v. Freight Co.*, 105 U. S. 13; *Crease v. Babcock*, 23 Pick. 334; *Massachusetts General Hospital v. State Mutual Life Ins. Co.*, 4 Gray, 227; *Commissioners on Inland Fisheries v. Holyoke Water Power Co.*, 104 Mass. 446;

Parker v. Metropolitan R. R. Co., 109 Mass. 506; *Metropolitan R. R. Co. v. Highland St. Ry. Co.*, 118 Mass. 290; *Thornton v. Marginal Freight Railway*, 123 Mass. 32. The charters under consideration in *Spring Valley Water Works v. Schottler*, 110 U. S. 347, and *Looker v. Maynard*, 179 U. S. 46, were granted by States in which such reservation of power was contained in a provision of the constitution.

SECTION 3. Commissioner of corporations.—The commissioner of corporations shall examine the certificates and reports submitted to him under the provisions of this act, and make suitable indorsements upon such as conform to the requirements of law. He shall keep a record of the names of corporations which submit certificates to his inspection, of the date of inspection and of his certificates when given, and of the result in brief of his inspection. He shall report to the attorney-general instances of neglect or omission on the part of corporations to comply with the provisions of this act for the enforcement of the penalties therefor. If a vacancy exists or if the commissioner is absent from his office, the first clerk shall perform the duties of the commissioner, and legal process served upon said clerk shall have the same force and effect as if served upon the commissioner. *Rev. Laws*, c. 110, § 1.

SECTION 4. Corporate powers.—Every corporation which is subject to the provisions of this act shall have the following powers and privileges and shall be subject to the following liabilities:—

(a) To have perpetual succession in its corporate name, unless a period for its duration is limited by special law.

(b) To sue or be sued in its corporate name, and to prosecute or defend to final judgment and execution or decree in any court of law or equity. *Rev. Laws*, c. 109, § 4.

Proof of corporate existence in actions at law.—By Revised Laws, c. 173, § 123 (St. 1881, c. 113; Pub. Sts. c. 167,

§ 87), it is provided that "If it is alleged in an action at law or suit in equity that a party is . . . a corporation, such allegation shall be taken as admitted, unless the party controverting it files in court, within the time allowed for the answer thereto, or within ten days after the filing of the paper which contains such allegation, a special demand for its proof."

Prior to St. 1881, c. 113, a general denial by the defendant put in issue the fact of the corporate existence of the plaintiff. *Goodwin Invalid Bedstead Co. v. Darling*, 133 Mass. 358, and cases cited. Such demand for proof cannot be made for the first time in the Superior Court on appeal, although the rules of the court below do not require the defendant to answer in writing. *Cabana v. Holyoke Conclave, etc.*, 160 Mass. 1.

Proof of acts of incorporation. — "Acts of incorporation shall be held to be public acts, and as such may be declared on and given in evidence." *Rev. Laws*, c. 175, § 72.

"The printed copies of all statutes, acts and resolves of the commonwealth, public or private, which are published under the authority of the commonwealth . . . shall be admitted as sufficient evidence thereof in all courts of law, and on all occasions." *Rev. Laws*, c. 175, § 73.

As to suits by and against foreign corporations, see notes of decisions under Sections 58, 60, 62.

(c) To have a capital stock to such an amount as may be fixed in its agreement of association or articles of organization or of amendment as hereinafter provided.

(d) To have a corporate seal, which it may alter at pleasure. *Rev. Laws*, c. 109, § 4.

Corporate Seal. — "If the seal of a . . . corporation is required by law to be affixed to a paper, the word 'seal' shall mean an impression of the official seal upon the paper as well as an impression on a wafer or wax affixed thereto." *Rev. Laws*, c. 8, § 5, cl. 19.

The above provision, so far as it related to corporations, was enacted in 1855 (St. 1855, c. 223). It was not retro-

active or applicable to instruments previously executed. *Bates v. Boston & N. Y. Central R. R. Co.*, 10 Allen, 251.

The mere printing of the facsimile of the corporate seal upon the blank forms of certificates of corporate obligation at the same time as the printing of the certificates does not constitute them contracts under seal. *Ibid.* But the actual and permanent impression upon the substance of the paper of the seal of the corporation is sufficient, although no wax, wafer, or other adhesive substance is used. *Hendee v. Pinkerton*, 14 Allen, 381.

(e) To elect all necessary officers, fix their compensation and define their duties. *Rev. Laws*, c. 109, § 4.

(f) To hold, purchase, convey, mortgage or lease within or without this commonwealth such real or personal property as the purposes of the corporation may require. *Rev. Laws*, c. 109, § 6; c. 110, §§ 33, 46.

Power of officers to mortgage.— Authority to make a mortgage need not be given by a formal vote, and may be inferred from the manner in which the business is conducted, with the knowledge and acquiescence of the corporation or its officers. *Sherman v. Fitch*, 98 Mass. 59.

A mortgage of all the personal property of a corporation except its book accounts, given by the president and treasurer of the corporation to secure the payment of a pre-existing debt, without previous authority or subsequent ratification by, or the knowledge and acquiescence of, the directors of the corporation is invalid, although the president and treasurer was also the general manager of the corporation, and owned all but two shares of its capital stock. *England v. Dearborn*, 141 Mass. 590.

Mortgages by foreign corporations.— In the absence of statutory prohibition, the directors of a foreign corporation which is authorized by the laws of the State where it is chartered to hold and convey real estate, acting under a by-law which gives to them the management and control of the business of the corporation, may, without the previous assent or subsequent ratification by the stockholders,

mortgage the real estate of the corporation in this commonwealth. *Saltmarsh v. Spaulding*, 147 Mass. 224; Cooke, Corporations, 4th ed., § 808.

Mortgages to foreign corporations.—A foreign corporation having a demand against a citizen of this commonwealth, on which an action can be maintained here, may take a mortgage of its debtor's real estate to secure such demand and may thereby acquire the same rights which appertain to other mortgagees. *American Mut. Life Ins. Co. v. Owen*, 15 Gray, 491.

Whether a mortgage of all the property of a corporation which is subject to the provisions of this act is valid without the affirmative vote of at least two-thirds of all its stock, or of two-thirds of each class of its stock issued and outstanding and entitled to vote, in view of the requirements of Section 40, *quære*.

Securities-holding corporations.—This act does not declare in express terms to what extent corporations may hold their own stock or the stock of other corporations. Before the passage of the act, it was held in *Treadwell v. Salisbury Mfg. Co.*, 7 Gray, 393, that a corporation might, as the best means of continuing its business, sell its property to another corporation, taking in payment therefor the shares of the latter corporation and distributing them among its stockholders; and *Howe v. Boston Carpet Co.*, 16 Gray, 493, decided that manufacturing and trading corporations might take stock in another corporation in payment of a debt. In 1895, the attorney general, in an opinion rendered to the commissioner of corporations, ruled that a corporation might be organized under the general laws for the business of buying and selling bonds, stock, grain, petroleum, and other articles of a speculative nature. 1 *Op. Atty. Gen.* 275.

In the absence of legislation to the contrary, a corporation may hold and sell its own stock, and may receive it in pledge or in payment in the lawful exercise of its corporate powers. *Dupee v. Boston Water Power Co.*, 114 Mass. 37, 43. But shares in a corporation are not necessarily

extinguished by being transferred to it, so that they cannot be reissued, or so that the amount of the capital stock is thereby reduced. *Commonwealth v. Boston & Albany R. R. Co.*, 143 Mass. 146, and cases cited.

Although there is no explicit authority to that effect, there are implications that a corporation may hold securities in Section 23 which forbids the corporation from voting on its own stock, and in Section 72 which regulates the method of deducting the value of securities held by corporations in computing the value of their corporate franchise for purposes of taxation.

In New Jersey, where express statutory authority is given to hold and dispose of securities of other corporations, a corporation which has power to take and dispose of the securities of another corporation may guarantee their payment if it disposes of them to another party in payment of its own debt; and if it buys property subject to a mortgage securing bonds, it may guarantee the payment thereof if the guaranty is taken as payment *pro tanto* of its debt. *Ellerman v. Chicago Junction Railways Co.*, 49 N. J. Eq. 217.

(g) To make contracts, incur liabilities and borrow money on its credit and for its use.

(h) To make by-laws not inconsistent with the laws of this commonwealth for regulating its government and for the administration of its affairs as hereinafter provided. *Rev. Laws*, c. 109, § 4.

See notes to Section 13.

(i) To be dissolved or to have its affairs wound up in the manner hereinafter provided.

See notes to Sections 51, 52.

SECTION 5. Corporate name. — A corporation which is organized under general laws may assume any name which shall indicate that it is a corporation as distinguished from a natural person or a partnership; but it shall not assume the name of another domestic corporation, or of a foreign

corporation, or of any partnership or association, carrying on business in this commonwealth at the time of such organization or within three years prior thereto, or a name so similar thereto as to be liable to be mistaken for it, except with the consent in writing of such existing corporation, association or partnership filed with the articles of organization. The supreme judicial court or the superior court shall have jurisdiction in equity, upon the application of any corporation, partnership, association or person interested or affected, to enjoin such corporation from doing business under a name assumed in violation of the provisions of this section although its articles of organization may have been approved and a certificate of incorporation may have been issued to it. *Rev. Laws*, c. 109, § 8; c. 110, § 16.

Prior to St. 1891, c. 257 (*Rev. Laws*, c. 109, § 8), from which this section is derived, the certificate of incorporation was held to be conclusive of the right to the corporate name, and gave a franchise to bear the name which could not be impeached by private persons. *Boston Rubber Shoe Co. v. Boston Rubber Co.*, 149 Mass. 436, 439. See *American Order of Scottish Clans v. Merrill*, 151 Mass. 558.

The adoption by a corporation of a name similar to that of another corporation in violation of the provisions of this section will furnish no defence as against its creditors. *Dooley v. Cheshire Glass Co.*, 15 Gray, 494.

ORGANIZATION OF CORPORATIONS.

SECTION 6. Organisation under special charter.—A corporation which is created by special charter shall, if no time is limited therein, be organized within two years after the passage of its act of incorporation. The persons named in said act and their associate subscribers to stock before the date of the act shall hold the franchise or privileges granted until the corporation is organized. *Rev. Laws*, c. 109, §§ 12, 18.

Incorporation by special act.—In Massachusetts, there is no constitutional restriction upon the formation of corporations, and they may be created by general or special law, in the discretion of the legislature. A proposed amendment to the constitution of Massachusetts, to the effect that "The Legislature shall not create corporations by special act, when the object of the incorporation is attainable by general laws," was recommended by the constitutional convention of 1853, and was submitted to and rejected by the people on November 14, 1853. *Debates in Mass. Convention*, Vol. 3, p. 714; *Journal of the Mass. Convention*, pp. 518-541.

Date of taking effect of charters.—Unless otherwise therein specially provided, an act of incorporation takes effect throughout the commonwealth on the thirtieth day next after the day on which it is approved by the governor, or is otherwise passed and approved, or has the force of a law, conformably to the constitution. *Rev. Laws*, c. 8, § 1.

Acceptance of special charter.—"All that is necessary to constitute a corporation aggregate is the grant of a franchise by the government, assented to by the grantees. In the case of the creation of a private corporation by special charter, indeed, an acceptance is ordinarily required in order to give it effect. Angell & Ames on Corporations, §§ 81, 82. But an act of the legislature, incorporating certain persons who have applied for a charter, and their associates, may constitute the persons named a corporation at once without further action on their part, either in the admission of associates, the choice of officers, or the division of the capital stock." GRAY, J., in *Hawes v. Anglo-Saxon Petroleum Co.*, 101 Mass. 385, 393; *Lincoln & Kennebec Bank v. Richardson*, 1 Maine, 79. But an act in amendment of a charter, unless it is so provided therein, does not require a formal vote of acceptance. *Bangor, O., & M. R. R. Co. v. Smith*, 47 Maine, 34, 44.

Proof of acceptance of charter.—The acceptance of a charter must be proved by the best evidence which it is in

the power of the party relying upon it to produce. The books of a corporation are the best evidence of its doings. If they have not been kept, or are inaccessible to the party upon whom the affirmative lies, such acceptance may be proved by implication from the acts of the corporation. *Coffin v. Collins*, 17 Maine, 440; *Hudson v. Carman*, 41 Maine, 84; *Farnsworth v. Lime Rock R. R. Co.*, 83 Maine, 440.

Organization under special charter.—For a case in which it was held that a corporation created by special law was never legally organized so that it could maintain an action against a subscriber for stock, see *Katama Land Co. v. Holley*, 129 Mass. 540.

SECTION 7. Organization under general laws.—Three or more persons may associate themselves by a written agreement of association with the intention of forming a corporation under general laws for any lawful purpose which is not excluded by the provisions of section one except to buy and sell real estate or to distil or manufacture intoxicating liquors. *Rev. Laws*, c. 110, §§ 4–14.

Agreement of association.—Organization by a written agreement of association is a condition precedent to the valid exercise of corporate rights, and such agreement takes the place of a charter or act of incorporation. *Utley v. Union Tool Co.*, 11 Gray, 139; *Oregon Railway Co. v. Oregonian Railway Co.*, 130 U. S. 1; *Ashbury v. Riche*, L. R. 7 H. L. 653, 671.

Beginning of corporate existence.—It has been stated that the manifest intent of the statute from which this section was derived is “that a corporation shall exist at least as soon as the first meeting has been held and officers have been elected, if not immediately upon the signing of the fundamental articles of association, by which the intention of the associates to avail themselves of the privileges conferred by the legislature is manifested, the name of the corporation determined, the amount of capital stock fixed, and the place in which and the purpose for which the cor-

poration is established are specified." *Hawes v. Anglo-Saxon Petroleum Co.*, 101 Mass. 385, 395, and cases cited; *Merrick v. Reynolds Engine & Governor Co.*, 101 Mass. 381. In view, however, of the explicit provision in Section 12 of the act that "the existence of every corporation which is not created by special law shall begin upon the filing of the articles of organization in the office of the secretary of the commonwealth," the filing of such articles is now a condition precedent to the beginning of corporate existence.

Who may become associates.—A husband and wife cannot be associates under the agreement of association, because such an agreement is a contract as among the subscribers themselves, and a husband and wife cannot lawfully contract with each other. 1 *Op. Atty. Gen.* 47. An infant may be one of the associates. *Nassau Phosphate Co.*, 2 Ch. Div. 610; *contra*, *Matter of Globe, etc. Association*, 135 N. Y. 280, 284.

Incorporation under repealed statute.—An attempted incorporation of a company of the kind to which this act is applicable, under Revised Laws, cc. 109, 110, after their repeal, would be ineffectual to create a corporation to which this act would apply, and it would be the duty of officers of the commonwealth not to recognize as having corporate existence a body of persons against whom it may be expedient for the commonwealth to proceed by *quo warranto* to oust them from the illegal enjoyment of corporate franchises. *Op. Atty. Gen.*, Aug. 7, 1902.

Lawful purposes.—*Refining oil, coal, etc.*—A corporation which has been incorporated for the purpose of "refining oil, coal and other minerals" and "preparing them for use" is strictly a manufacturing corporation. *Hawes v. Anglo-Saxon Petroleum Co.*, 101 Mass. 385, 396.

Ibid.—*Manufacturing and selling coke, tar, ammonia, gas, etc.*—An organization which is proposed to be incorporated "for the purpose of manufacturing and selling coke, tar, ammonia, gas and other products of coal," but with no purpose or intent to engage in the business of distributing gas to the public, such limitation appearing in the agree-

ment of association, may incorporate under the provisions of this section. *Op. Atty. Gen.*, May 1, 1902.

Ibid. — *Sale of intoxicating liquors.* — Although, by the provisions of the statute, a corporation cannot be organized under the general laws for distilling or manufacturing intoxicating liquors, yet a specially chartered domestic corporation or a foreign corporation may sell intoxicating liquors within the commonwealth if duly licensed so to do. *Enterprise Brewing Co. v. Grime*, 178 Mass. 252; *Op. Atty. Gen.*, June 16, 1899, reversing previous opinion in 1 *Op. Atty. Gen.* 304. If corporations should be created by special law to buy and sell real estate or to distill or manufacture intoxicating liquors, they would be controlled by, and be subject to, the provisions of this act.

Ibid. — *Dealing in stock and bonds.* — The fact that a proposed corporation is to deal in bonds, stock, grain, petroleum, and other articles of a speculative nature is not a bar to its incorporation under the provisions of this section. 1 *Op. Atty. Gen.* 275.

Unlawful purposes. — *Insuring employment to registered employees.* — A corporation is not entitled to be organized under this section if its purpose is to register employees and to provide employment for such as register if they are discharged or suspended. Such a purpose is an insurance business. 1 *Op. Atty. Gen.* 153.

Statement of purposes. — A statement in the agreement of association that the corporation was organized for the purpose "of manufacturing and selling daguerreotype matings and preservers, and all other goods, wares, merchandise, and articles, made of brass, silver, gold, iron or other metals, or any compounds thereof," was held to be sufficiently definite and distinct to satisfy a statute (Gen. Sts. c. 61, § 2) which required the purpose to be "distinctly and definitely specified." *Bird v. Daggett*, 97 Mass. 494.

SECTION 8. Agreement of association. — The agreement of association¹ shall state: —

¹ See Appendix, Form 2.

(a) That the subscribers thereto associate themselves with the intention of forming a corporation.

(b) The corporate name assumed.

(c) The location of the principal office of the corporation in the commonwealth, and elsewhere in the case of corporations organized to do business wholly outside the commonwealth.

(d) The purposes for which the corporation is formed and the nature of the business to be transacted.

(e) The total amount of the capital stock of the corporation, which shall not be less than one thousand dollars, to be authorized; the par value of the shares, which shall not be less than five dollars; the number of shares into which the capital stock is to be divided, and the restrictions, if any, imposed upon their transfer; and, if there are to be two or more classes of stock, a description of the different classes and a statement of the terms on which they are to be created and of the method of voting thereon.

(f) Any other provisions not inconsistent with law for the conduct and regulation of the business of the corporation, for its voluntary dissolution, or for limiting, defining or regulating the powers of the corporation, or of its directors or stockholders, or any class of stockholders.

(g) The subscriber or subscribers by whom the first meeting of the incorporators shall be called.

(h) The names and residences of the incorporators and the amount of the stock subscribed for by each. *Rev. Laws*, c. 110, § 15; *St.* 1902, c. 441.

SECTION 9. First meeting of incorporators, — notice. — The first meeting of the incorporators of a corporation created by special law shall, unless such law otherwise provides, be called by a notice signed by a majority of the persons named in the act of incorporation; and the first meeting of the incorporators of a corporation organized under gen-

eral laws shall be called by a notice¹ signed either by such subscriber to the agreement of association as may be designated therein or by a majority of the subscribers to such agreement; and such notice shall state the time, place and purposes of the meeting. A copy of such notice shall, seven days at least before the day appointed for the meeting, be given to each incorporator or left at his residence or usual place of business, or deposited in the post office, postage prepaid, and addressed to him at his residence or usual place of business, and another copy thereof, and an affidavit of one of the signers that the notice has been duly served, shall be recorded with the records of the corporation. If all of the incorporators shall in writing, indorsed upon the agreement of association, or, in the case of a corporation created by special law, upon the charter or a certified copy thereof, waive such notice and fix the time and place of the meeting, no notice shall be required. *Rev. Laws*, c. 109, §§ 13, 14; c. 110, § 17.

Persons by whom meeting shall be called.—The provisions of this section as to the persons by whom the first meeting of a corporation created by special law shall be called are in accordance with the provisions of St. 1855, c. 140 (Gen. Sts. c. 68, § 3; Pub. Sts. c. 105, § 9; Rev. Laws, c. 109, § 13). Explicit provision has also been made in this and the preceding section for calling the first meeting of a corporation organized under general laws. These provisions will obviate the inconveniences pointed out by SHAW, C. J., in *Lechmere Bank v. Boynton*, 11 Cush. 369, as likely to arise under an act which authorizes any one of the incorporators to call the first meeting, whereby several times and places therefor might be fixed, several meetings held, and several organizations effected by contending factions.

The St. 1855, c. 140, although enacted to avoid the diffi-

¹ See Appendix, Form 3.

culty of having two parties attempting to organize separately under the same charter, each claiming to be the corporation, is merely directory, and is designed to secure the rights conferred by the charter to those to whom it was granted among themselves, by providing an orderly method of organization. *Newcomb v. Reed*, 12 Allen, 362; *Waltham v. Brackett*, 98 Mass. 98. But an organization to which all the members consent is valid, although they disregard the statutory requirements as to notice. *Newcomb v. Reed*, *ubi supra*; *Braintree Water Supply Co. v. Braintree*, 146 Mass. 482, 488. See *McClinch v. Sturgis*, 72 Maine, 288, 296; *Simpson v. Garland*, 76 Maine, 203.

In an earlier case, it was said that, under an act of incorporation requiring the first meeting to be called by a majority of the incorporators, a call signed by one partner by the firm name, both partners being named in the act, could properly be considered as signed by each of them, the one who actually signed acting for the other. *Chester Glass Co. v. Dewey*, 16 Mass. 94.

SECTION 10. Organization, — election of officers. — At such first meeting, or at any adjournment thereof, the incorporators shall organize by the choice, by ballot, of a temporary clerk, who shall be sworn, by the adoption of by-laws¹ and by the election in such manner as the by-laws may determine of directors, of a treasurer, of a clerk and of such other officers as the by-laws may prescribe. The temporary clerk shall make and attest a record of the proceedings² until the clerk has been chosen and sworn, including a record of such choice and qualification.

Extraterritorial organization unlawful. — A business corporation cannot be legally organized outside the limits of the commonwealth. 1 *Op. Atty. Gen.* 185; *Miller v. Ewer*, 27 Maine, 509; *Freeman v. Machias Water Power & Mill Co.*, 38 Maine, 348.

¹ See Appendix, Form 4.

² See Appendix, Form 5.

First choice of officers. — The provisions relative to the manner of electing officers from which Section 18 is derived were said in *Boston Acid Mfg. Co. v. Moring*, 15 Gray, 211, to be inapplicable to the first choice of officers by subscribers to the agreement of association. Nevertheless, the Pub. Sts. c. 106, § 20, and the Rev. Laws, c. 110, § 19, required such first choice to be made in the same manner as the regular annual elections. The provision in this section that the manner of the first election shall be such as the by-laws may determine was apparently made in accordance with the intimation of the court in the above-cited case.

SECTION 11. *Articles of organization.* — A majority of the directors who are elected at such first meeting shall forthwith make, sign and make oath to articles¹ setting forth: —

(a) A true copy of the agreement of association and the names of the subscribers thereto, or of the act of incorporation, as the case may be.

(b) The date of the first meeting and of the successive adjournments thereof, if any.

(c) The amount of capital stock then to be issued; the amount thereof to be paid for in full in cash; the amount thereof to be paid for in cash by instalments and the instalment to be paid before the corporation commences business; and the amount thereof to be paid for in property. If such property consists in any part of real estate, its location, area and the amount of stock to be issued therefor shall be stated; if any part of such property is personal, it shall be described in such detail as the commissioner of corporations may require, and the amount of stock to be issued therefor stated. If any part of the capital stock is issued for services or expenses, the nature of such services or expenses and the amount of stock which is issued therefor shall be clearly stated.

¹ See Appendix, Form 6.

(d) The name, residence and post office address of each of the officers of the corporation.

The directors who sign such articles shall be jointly and severally liable to any stockholder of the corporation for actual damages caused by any statement therein which is false and which they know to be false. *Rev. Laws*, c. 110, §§ 20, 44.

Estoppel by false statements. — The officers of a corporation are estopped from setting up the falsity of any statements in the articles of organization to aid in defeating an action against the corporation. *Dooley v. Cheshire Glass Co.*, 15 Gray, 494.

Knowledge of falsity. — Under statutes which subjected officers of a corporation to personal liability for making a false certificate "knowing it to be false," it was held that it must be made to appear that the statement was wilfully false; that is, made intentionally with a purpose to deceive. Therefore, if when they signed the certificate they believed it to be true, or if a material fact had escaped their recollection, they would not be liable. *Stebbins v. Edmands*, 12 Gray, 203; *Felker v. Standard Yarn Co.*, 150 Mass. 264; *Heard v. Pictorial Press*, 182 Mass. 530; *International Paper Co. v. Gazette Co.*, 182 Mass. 578.

SECTION 12. Certificate of incorporation. — The articles of organization and the record of the first meeting of the incorporators shall be submitted to the commissioner of corporations, who shall examine them and who may require such amendment thereof or such additional information as he may consider necessary. If he finds that the articles conform to the provisions of the preceding sections relative to the organization of the corporation, he shall so certify and indorse his approval thereon. Thereupon, the articles shall, upon payment of the fee hereinafter provided, be filed in the office of the secretary of the commonwealth, who shall cause them and the indorsement thereon to be

recorded, and, except in the case of a corporation created by special law, shall thereupon issue a certificate of incorporation in the following form : —

COMMONWEALTH OF MASSACHUSETTS.

Be it known that whereas (the names of the subscribers to the agreement of association) have associated themselves with the intention of forming a corporation under the name of (the name of the corporation), for the purpose (the purpose declared in the agreement of association), with a capital stock of (the amount fixed in the agreement of association, with a statement of the several classes into which the stock is divided and their respective amounts, and of the method of paying for such stock, whether by cash in full, cash on instalments, property, or partly cash and partly property), and have complied with the provisions of the statutes of this commonwealth in such case made and provided, as appears from the articles of organization of said corporation, duly approved by the commissioner of corporations and recorded in this office : now, therefore, I (the name of the secretary), secretary of the commonwealth of Massachusetts, do hereby certify that said (the names of the subscribers to the agreement of association), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (name of the corporation), with the powers, rights and privileges, and subject to the limitations, duties and restrictions, which by law appertain thereto.

Witness my official signature hereunto subscribed, and the great seal of the commonwealth of Massachusetts hereunto affixed, this day of in the year (the date of filing of the articles of organization).

The secretary shall sign the certificate of incorporation and cause the great seal of the commonwealth to be thereto affixed, and such certificate shall have the force and effect of a special charter. The existence of every corporation which is not created by special law shall begin upon the filing of the articles of organization in the office of the secre-

tary of the commonwealth. The secretary of the commonwealth shall also cause a record of the certificate of incorporation to be made, and such certificate, or such record, or a certified copy thereof, shall be conclusive evidence of the existence of such corporation. *Rev. Laws*, c. 110, § 20.

Nature of charter. — The charter of a corporation is a contract between the corporation and each of its stockholders, and neither the directors nor a majority of the stockholders can bind a minority of the stockholders without their consent in any matter which is not expressly or impliedly authorized by the charter. *Byrne v. Schuyler Electric Mfg. Co.*, 65 Conn. 336.

Beginning of corporate existence. — The provision in this section defining the time when corporate existence of corporations organized under general laws shall begin is new in this commonwealth. Under the earlier statutes, it was held that corporate existence began at least as soon as the first meeting had been held and officers had been elected, if not immediately upon the signing of the fundamental articles or agreement of association, *Hawes v. Anglo-Saxon Petroleum Co.*, 101 Mass. 385, 390; and that the filing of the certificate of organization required by Gen. Sts. c. 61, § 8 (St. 1870, c. 224, § 11; Pub. Sts. c. 106, § 21; *Rev. Laws*, c. 110, § 20), was not such a condition precedent to corporate existence that a failure to file it was a defence to an action against the corporation by a creditor. *Merrick v. Reynolds Engine & Governor Co.*, 101 Mass. 381.

Liability of subscribers upon defective organization. — Subscribers to stock of a supposed corporation which, by reason of a defective organization, has no legal corporate existence, do not thereby become liable as stockholders. *Fay v. Noble*, 7 Cush. 188; *Ward v. Brigham*, 127 Mass. 24. See *Perry v. Hale*, 143 Mass. 540.

SECTION 18. By-laws. — Every corporation may determine by its by-laws¹ the time and place of holding and

¹ See Appendix, Form 4.

the manner of conducting its meetings, and, in accordance with the provisions of section eighteen, of electing its officers, the powers, duties and tenure of its officers, the number of its directors, the number of stockholders and of directors necessary to constitute a quorum, the manner of calling regular and special meetings of the directors, the expediency of providing for an executive committee, the number of members thereof, and the duties which may be delegated to it, the method of making demand for payment of subscriptions to its capital stock, the conditions under which a new certificate of stock may be issued in place of a certificate which is alleged to have been lost or destroyed, the method in general of transacting its business and the manner by which the by-laws may be altered, amended or repealed. *Rev. Laws*, c. 110, § 26.

Extent of power to make by-laws. — The provisions of this section are not restrictive but directory, and corporations may make by-laws upon other subjects than those herein enumerated. *Davis v. Proprietors of Meeting House in Lowell*, 8 Met. 321, 325.

Reasonableness of by-laws. — A by-law which is made in pursuance of express authority therefor must be lawful and reasonable; and if it is inconsistent with the common law or with the statutes, as by imposing a liability at law on subscribers to stock for unpaid subscriptions, it is void. *Kennebec & Portland R. R. Co. v. Kendall*, 81 Maine, 470.

Scope and validity. — A corporation cannot by a by-law create a personal liability of stockholders or officers for the debts of the corporation other than that imposed by statute. *Trustees of Free Schools in Andover v. Flint*, 13 Met. 539.

Ibid. — Persons who deal with a corporation which is subject to the provisions of this act are not bound by the powers of the officers, which are specifically enumerated in the by-laws; but, as against third persons, such officers

shall be taken to have the authority which their designations ordinarily imply. *Fay v. Noble*, 12 Cush. 1.

Ibid. — A by-law which is void in part, because illegal, is not thereby made wholly void. It is no more true of by-laws than of statutes and contracts, that, if one part is void, the whole is necessarily void. *Amesbury v. Bowditch Mutual Fire Ins. Co.*, 6 Gray, 596.

Restrictions on transfer of stock. — A by-law of a foreign corporation which prohibited the transfer of stock of the corporation unless the stockholder should first offer in writing to sell the stock to the board of directors upon the same terms and for the same price as shall have been offered by the prospective purchaser, was held not to be against public policy and void in this commonwealth, at least as between the corporation and the transferee. *Barrett v. King*, 181 Mass. 476. It was said in that case, citing as authority therefor *New England Trust Co. v. Abbott*, 162 Mass. 148, that, under the law of Massachusetts, such stipulations, considered as a contract between the corporation and the stockholder, undoubtedly would be lawful; and it was further observed that, in *Price v. Minot*, 107 Mass. 49, 60, no doubt was thrown on the validity of a by-law which provided that no stock should be transferred by any shareholder unless it should first have been offered to the corporation itself at par.

SECTION 14. *Issue of stock.* — Capital stock may be issued for cash, property, tangible or intangible, services or expenses. Stock which is issued for cash may be paid for in full before it is issued or by instalments. If it is paid for by instalments, the stock certificate shall be legibly stamped with the words “—— per cent paid up, balance payable [stating manner and time of payment] —— and shares subject to forfeiture if unpaid”, the proportion and terms of payment being stated to agree with the facts; and, as each instalment is demanded and paid, the certificate shall be stamped accordingly. (Stock may be issued

subsequent to the issue of stock certified by the articles of organization if a certificate¹ is prepared within thirty days after the date when the issue of such additional stock has been authorized, and is signed and sworn to by the president, treasurer and a majority of the directors setting forth:—(a) the total amount of capital stock authorized; (b) the amount of stock already issued for cash payable by instalments and the amount paid thereon; also the amount of full paid stock already issued for cash, property, services or expenses; (c) the amount of additional stock to be issued for cash, property, services or expenses respectively; (d) a description of said property, and a statement of the nature of said services or expenses, in the manner required by the provisions of section eleven. Such certificate shall be submitted to the commissioner of corporations, who shall examine it in the same manner as the original articles of organization. If he finds that it conforms to the requirements of law, he shall so certify and indorse his approval thereon, and it shall thereupon be filed in the office of the secretary of the commonwealth who, upon payment of the fee hereinafter provided, shall cause it and the indorsement thereon to be recorded. No issue of stock subsequent to the issue of stock certified by the articles of organization shall be lawful until said certificate shall have been filed in the office of the secretary of the commonwealth as aforesaid. No stock shall be at any time issued unless the cash, so far as due, or the property, services or expenses for which it was authorized to be issued has been actually received or incurred by, or conveyed or rendered to, the corporation; and the president, treasurer and directors shall be jointly and severally liable to any stockholder of the corporation for actual damages caused to him by such issue.

¹ See Appendix, Form 7.

Patent rights as property.—In *Wilson v. Martin-Wilson Fire Alarm Co.*, 149 Mass. 24, it was said that “the rights secured by letters patent of the United States exist in Massachusetts in the same manner as in Maine, or in the rest of the United States. They are intangible property, and, so far as they have any *situs*, it is that of the residence or domicil of the owner.” It was accordingly held that under St. 1884, c. 285, relative to equitable attachment (re-enacted in Rev. Laws, c. 159, § 3, cl. 7; St. 1902, c. 544, § 23), the interest of a foreign corporation in letters patent could be reached and applied here in payment of a debt.

Issue of unpaid stock void.—A promise to give to a subscriber for stock a certain number of shares free of cost, although made to induce him to become a subscriber and to influence others to become subscribers, gives to him a secret advantage over other subscribers, and is void. *Nickerson v. English*, 142 Mass. 267, 272.

SECTION 15. Payment of subscriptions to stock.—If, by the provisions of the articles of organization, capital stock which is issued for cash is to be paid for in full before it is issued, the directors may require payment of the subscriptions therefor in such proportions and at such times and places as they deem proper by making demand¹ therefor according to the by-laws, or, in default of such by-law, by a notice mailed to each subscriber at least seven days before such subscription is payable. If the subscriber refuses or neglects to pay the amount so demanded for thirty days after the time limited in such notice for payment, his rights² of subscription may be sold by public auction by the treasurer of the corporation who, out of the proceeds of such sale, shall pay to the corporation the amount then due from such subscriber with interest and incidental charges, first giving notice³ by mail to such subscriber,

¹ See Appendix, Form 8.

² See Appendix, Form 9.

³ See Appendix, Form 10.

not less than ten days prior to such sale, of the time and place appointed therefor and of the amount due and payable by him. Upon the sale of such rights as aforesaid, the directors shall give to the purchaser a certificate thereof. If the rights of such subscriber do not sell for an amount sufficient to pay the amount due from him with interest and charges of sale, he shall be liable to the corporation in an action at law for the deficiency; if they sell for more, he shall be entitled to the surplus. At the expiration of thirty days after the time limited for payment as aforesaid, the directors may waive their right to offer such rights for sale, and may elect to proceed by an action at law against such delinquent subscriber to recover all amounts due and payable by him with interest. If said rights are not sold at said auction, or if a judgment rendered in an action against a subscriber remains unsatisfied for thirty days, all amounts previously paid by him shall be forfeited to the corporation. *Rev. Laws*, c. 110, §§ 40, 41, 42.

Effect of subscriptions for stock.—An agreement in writing to take and pay for stock in a proposed corporation is an offer which, after the organization of the corporation and its acceptance of the offer, becomes a binding contract. *Kennebec & Portland R. R. Co. v. Palmer*, 84 Maine, 366; *Penobscot R. R. Co. v. Dummer*, 40 Maine, 172; *Starrett v. Rockland Fire & Marine Ins. Co.*, 65 Maine, 374; *Skowhegan & Athens R. R. Co. v. Kinsman*, 77 Maine, 370.

Ibid. — *Withdrawal of subscription to stock of unorganized company.*—A subscriber to the capital stock of an unorganized corporation may withdraw his subscription at any time before the corporation is organized and his subscription accepted; for, until then, it is not a completed contract. *Hudson Real Estate Co. v. Tower*, 156 Mass. 82; s. c. 161 Mass. 10; *Bryant's Pond Steam Mill Co. v. Felt*,

87 Maine, 284; *Muncy Traction Engine Co. v. Green*, 148 Penn. St. 269.

Ibid. — *Subscriptions as affected by charter alterations.* — Subscriptions to the capital stock of corporations created by special law will not be defeated by a subsequent amendment of the charter. The stockholders will be regarded as assenting to the change. *Agricultural Branch R. R. Co. v. Winchester*, 18 Allen, 29.

Demand for payment of subscriptions. — *Requisites.* — If the amount of the capital stock and the number of shares are fixed by the act of incorporation, by the articles of agreement, or by any vote or by-law passed conformably thereto, no assessment or demand for instalments can lawfully be made on the share of any subscriber until the whole number of shares has been taken. *Stoneham Branch R. R. Co. v. Gould*, 2 Gray, 277.

Ibid. — *Validity of demand.* — A demand for subscriptions which is made by directors who have been illegally elected cannot be enforced. *People's Ins. Co. v. Westcott*, 14 Gray, 440.

Necessity of demand conclusive on stockholders. — The wisdom or necessity of a demand for the payment of an instalment, if it is within the power of the corporation or of the directors to make it, cannot be controverted by the stockholders, at any rate in the absence of fraud. *Anglo-American Land, etc. Co. v. Dyer*, 181 Mass. 593.

Notice of sale. — *Requisites.* — A notice that shares of stock would be sold for non-payment of subscriptions on a day fixed and by a designated auctioneer, who, for many years, had been an auctioneer in the place at which the notice bore date, was held to be insufficient because it omitted to state the place of sale. *Lexington & West Cambridge R. R. Co. v. Staples*, 5 Gray, 520.

Liability at law of subscribers to stock. — Before the passage of this act, it was well settled, both in Massachusetts and in Maine, that a subscription for shares of stock in such a corporation as is subject to the provisions of the act subjected the subscriber to those liabilities only which

were imposed by the statute under which the corporation was organized ; and that, if a subscriber had not expressly promised to pay for his subscription, no such promise could be implied, so as to enable the corporation to maintain an action against him personally for the amount of the subscription, or any part thereof. *Mechanics' Foundry & Machine Co. v. Hall*, 121 Mass. 272, and cases cited ; *Belfast & Moosehead R. R. Co. v. Moore*, 60 Maine, 561 ; *Same v. Cottrell*, 66 Maine, 185 ; *Kennebec & Portland R. R. Co. v. Kendall*, 81 Maine, 470. By the express provisions of Section 15 of the act, however, a delinquent subscriber is made liable to the corporation in an action at law either before or after a sale of his rights, at the election of the directors. Reference is therefore made here only to such decisions as are based upon an express agreement of a subscriber to pay for his stock, or upon statutes governing other classes of corporations which imposed such personal liability.

Conditions precedent to maintenance of action. — All conditions, as to notice and other formalities, required by statute, or by the by-laws, must be observed by the corporation before it can maintain an action to enforce payments of subscriptions for stock. *Grosse Isle Hotel Co. v. I'Ansons Exrs.*, 42 N. J. Law, 10.

Ibid. — *Promise must be to corporation.* — An agreement in writing, made after the incorporation of the plaintiff company by special law, "to pay the sums set against our respective names, to such persons as shall be authorized to receive the same, for the establishment and support of a new ferry . . . the same to be represented by the certificates of stock to be created by the company hereafter to be organized," was held not to be enforceable, because, no promise having been made to the company by its corporate name, or by any other, or to any person for its use, it could not sue upon it. *People's Ferry Co. v. Balch*, 8 Gray, 303, 310.

Ibid. — *Division of capital stock into shares.* — In an action to enforce the payment of assessments or subscrip-

tions to the capital stock of a railroad corporation, brought under the Rev. Sts. c. 39, § 53, which imposed a personal liability on the subscriber, it was held that, inasmuch as the charter provided that "the capital stock of the said company shall consist of not more than thirty-five thousand shares, the number of which shall from time to time be determined by the directors thereof," the assessments were void and could not be enforced, because the directors had not, previous to laying them, fixed and determined the number of shares of which, for the time being, the capital stock should consist. *Troy & Greenfield R. R. Co. v. Newton*, 8 Gray, 596; *Worcester & Nashua R. R. Co. v. Hinds*, 8 Cush. 110. If, however, a charter containing such a provision also provides that the corporation should commence the construction of its road when a given number of shares are subscribed, an assessment is valid if, before it is laid, the requisite number of shares has been subscribed and the directors have voted to close the subscription books. *Lexington & West Cambridge R. R. Co. v. Chandler*, 13 Met. 311.

Actions to recover subscription. — Parties plaintiff. — Upon a contract in writing whereby the subscribers agree "to and with each other" to form a corporation and to "pay to the treasurer" thereof the amount set against their respective names, the corporation, after it is organized, is the proper party to bring an action against a subscriber who, upon the allotment to him of the shares for which he subscribed, refuses to pay therefor. *Athol Music Hall Co. v. Carey*, 116 Mass. 471.

Ibid. — Pleading. — An action which is brought to recover the deficiency remaining after a sale of shares in a railroad company for the non-payment of assessments is not brought upon the contract of subscription to recover the assessments, but it is a statutory action brought to recover the deficiency after such sale, and it is therefore unnecessary to set forth the contract of subscription under St. 1852, c. 312, § 2, cl. 9 (Rev. Laws, c. 173, § 2, cl. 10). *Troy & Greenfield R. R. Co. v. Newton*, 1 Gray, 544; *Amherst & Belchertown R. R. Co. v. Watson*, 4 Gray, 61.

Ibid. — *Statutes of limitation.* — Statutes of limitation do not begin to run as against subscriptions to stock, payable as called for, until a call or its equivalent has been made; and, when an assessment to pay debts has been made, subscribers cannot object that the corporate duty in this regard had not been earlier discharged. *Hawkins v. Glenn*, 131 U. S. 319.

Ibid. — In the case of the insolvency of corporations, the statutes of limitation do not begin to run against its stockholders for unpaid stock subscriptions until the date when the deficiency of the corporate assets to pay the corporate debts is determined. *Hale v. Cushman*, 96 Maine, 148.

When an action at law will not lie. — An action will not lie against a subscriber for shares to capital stock which is "to be in four hundred shares of one hundred dollars each," if, by the terms of the subscription of another subscriber, he is to pay for his stock in the stock of another corporation whose shares are below par. *West Springfield Bridge v. Chapin*, 6 Cush. 50. If, after a subscriber for stock in a railroad corporation has refused to pay assessments, the corporation procures subscriptions from other persons to the full amount of the capital stock, it cannot sell the shares of such subscriber and sue him for the difference between the assessment and the amount for which the shares were sold. *Athol & Enfield R. R. Co. v. Prescott*, 110 Mass. 213.

Rescission of subscription and forfeiture of stock. — For a case as to the rescission and cancellation by the officers of a corporation of a subscription for stock, and a declaration of its forfeiture because of an unreasonable delay by the subscriber in making payment for it, see *Perkins v. Union Button Hole & Embroidery Machine Co.*, 12 Allen, 273.

Recovery back of subscriptions. — If a person is induced by the fraudulent representations of a promoter of a corporation to subscribe for its stock, and pays his subscription to the treasurer, he cannot, by rescinding the contract, maintain an action against the other shareholders for the

recovery of the money so paid, although the incorporation is invalid and they are partners. His remedy, if any, is by an action of tort against the person who practised the fraud upon him. *Perry v. Hale*, 143 Mass. 540.

Remedy of purchaser for refusal of stock certificate. — Mandamus will not lie upon the petition of a purchaser of shares in a railroad corporation at a sale for the non-payment of an assessment thereon to compel the officers to make a transfer thereof on the books of the corporation and to issue a certificate to him, for he has an adequate and complete remedy by action for damages. *Stackpole v. Seymour*, 127 Mass. 104; *Murray v. Stevens*, 110 Mass. 95.

SECTION 16. Payment of stock by instalments. — If stock is issued payable by instalments, the directors may require the payment of subscriptions for stock in such proportions and at such times and places as they deem proper, by making demand¹ therefor according to the by-laws and by a notice² mailed to each stockholder at least two weeks before any instalment is payable. If a stockholder neglects to pay an instalment for thirty days after the time limited in such notice for payment, the treasurer of the corporation may sell such stockholder's shares by public auction, and, out of the proceeds of such sale, shall pay to the corporation all instalments then due from such stockholder with interest and incidental charges. A notice stating the time and place of such sale and the amount of the instalment due and payable and also the number of the certificate and number of shares of stock thus offered for sale shall be sent by the treasurer by mail not less than ten days prior to such sale to such stockholder and also to the person who originally subscribed to the said delinquent stock. Upon the sale of such stock as aforesaid, the directors shall transfer the shares so sold to the purchaser, who

¹ See Appendix, Form 11.

² See Appendix, Form 12.

shall be entitled to a certificate therefor; and thereupon, the outstanding certificate shall be void. The balance of the proceeds of such sale shall be held by the corporation for such stockholder, his representatives or assigns, and be paid to him or them at any time upon surrender and delivery to the corporation of his certificate. If no person offers an amount sufficient to pay all instalments due upon such stock with interest and incidental charges, it shall not be sold, but the delinquent stockholder shall be liable to the corporation in an action at law for such instalments, interest and incidental charges, and if a judgment rendered in such action remains unsatisfied for thirty days, the original subscriber shall be so liable. Instead of offering such stock for sale, the directors, at the expiration of the time limited in the notice for payment of such instalments, may proceed by an action at law against the delinquent stockholder, and, if a judgment rendered against him in such action remains unsatisfied for thirty days, against the original subscriber, for the recovery of such instalments, interest and incidental charges. The delinquent stockholder or the original subscriber, as the case may be, upon the payment of such instalments, interest and incidental charges, or of the judgment therefor, shall be entitled to a certificate of the stock, so stamped as to indicate the payments made, and, thereupon, the original certificate for such stock shall be void. If a judgment rendered in an action against the original subscriber remains unsatisfied for thirty days, said stock shall be forfeited to the corporation, an entry of transfer to it shall be made on its books, and, thereupon, the original certificate shall be void. While the stock remains the property of the corporation, no dividends shall be declared nor instalments paid upon it; but it shall remain subject to the control of the corporation according to its by-laws.

Liability of original subscriber. — It seems that, even if there were no statutory provision to that effect, the original subscriber would be held liable at common law for his original subscription notwithstanding the transfer of his shares. "The subscription to the stock and the acceptance of a certificate for the shares constitute a contract between the subscriber and the company, by which the subscriber engages to pay the remaining instalment on demand by the corporation. From this agreement the subscriber cannot recede without the assent of the company. He may transfer his stock without consent of the company, and thereby vest in the purchaser his right to the shares, and as between himself and such purchaser cast upon the latter the obligation to pay him such instalments as are called upon the stock, but the subscriber cannot thereby impair or affect the contract rights of the company. His liability to the company cannot thereby become extinguished." VAN SYCKEL, J., in *Hood v. McNaughton*, 54 N. J. Law, 425, 428. But, as between a vendor of stock, who does not appear to have been an original subscriber, and his vendee, the latter is liable for an assessment laid after the sale, although neither at the time of the sale or of the making of the assessment had certificates of stock been issued by the corporation. *Brigham v. Mead*, 10 Allen, 245.

OFFICERS.

SECTION 17. Officers. — The business of every corporation shall be managed and conducted by a president, a board of not less than three directors, a clerk, a treasurer and such other officers and such agents as the corporation by its by-laws shall authorize. *Rev. Laws*, c. 110, § 22.

Who are officers. — Whether those who are called officers of a corporation are in fact such, or are merely agents, *quære*; but, in general, officers of a corporation are such officers as are necessary to the carrying on of its corporate existence. An attorney is not necessarily an officer of a

corporation, and is not made so by a by-law which provides that he shall be. *Op. Atty. Gen.*, Nov. 10, 1900.

Incompatibility of offices. — Unless the statutes or by-laws otherwise provide, the same person may be treasurer and director. *Sargent v. Webster*, 13 Met. 497.

Authority, how shown. — The authority of an agent of a corporation need not be proved by any record or by any writing, but may be shown by acts and by the general course of business. *Warren v. Ocean Ins. Co.*, 16 Maine, 489; *Badger v. Bank of Cumberland*, 26 Maine, 428, 435; *Trundy v. Farrar*, 32 Maine, 225.

Ratification of unauthorized acts of agent. — The unauthorized act of an agent of a corporation may be ratified by its board of directors. It is not necessary, however, that a formal vote of ratification should be passed, but it must be shown that the officers who had the power to authorize the act knew of it, and adopted it as a valid act of the corporation, although they passed no formal vote. *Murray v. Nelson Lumber Co.*, 148 Mass. 250. See also *Bi-Spool Sewing Machine Co. v. Acme Mfg. Co.*, 153 Mass. 404.

SECTION 18. Election of officers. — The directors, the treasurer, the clerk and such other officers as the by-laws may prescribe shall be elected annually by the stockholders by ballot, and the president shall be elected annually by and from the board of directors. Every director, unless the by-laws otherwise provide, shall be a stockholder. The treasurer may be required to give a bond for the faithful performance of his duty in such sum and with such sureties as the by-laws may prescribe. The clerk, who shall be a resident of this commonwealth, shall be sworn and shall record all votes of the corporation in a book to be kept for that purpose. Every corporation may, by its articles of organization or by an amendment to such articles ¹ adopted as hereinafter provided, divide its directors into classes

¹ See Appendix, Form 13.

and prescribe the tenure of office of the several classes ; but no class shall be elected for a shorter period than one year or for a longer period than five years, and the term of office of at least one class shall expire in each year. Except as herein otherwise provided, the officers of a corporation shall hold office for one year and until their successors are chosen and qualified. The manner of choosing or of appointing all other agents and officers and of filling all vacancies shall be prescribed by the by-laws, and, in default of such by-law, vacancies may be filled by the board of directors. *Rev. Laws, c. 110, §§ 22-24.*

Effect and scope of statute. — The provisions of this section relative to the manner of electing officers are said to be inapplicable to the first choice of officers by subscribers to the agreement of association. *Boston Acid Mfg. Co. v. Moring*, 15 Gray, 211. And although by Pub. Sts. c. 106, § 20 (*Rev. Laws, c. 110, § 19*), such first choice was required to be made in the same manner as the regular annual elections, this act, by Section 10, authorizes the first choice of officers to be made "in such manner as the by-laws may determine."

Ibid. — *Statute merely directory.* — The provisions relative to the election of officers are merely directory, and a neglect to comply therewith does not cause a forfeiture of corporate rights and privileges or effect a dissolution of the corporation. *Knowlton v. Ackley*, 8 Cush. 93.

Election by minority of stockholders. — Under a by-law which provides that "no business shall be transacted at any meeting of the stockholders unless a majority of the stock is represented, except to organize the meeting and adjourn to some future time," an election of directors at a meeting at which less than a majority of the stock is represented is void, and the old board of directors will continue in office by virtue of the by-laws of the company. *Ellsworth Woolen Mfg. Co. v. Faunce*, 79 Maine, 440.

Delegation of election unlawful. — The election of officers

is a corporate function which cannot be delegated by a by-law, except by express statutory authority. *Op. Atty. Gen.*, Nov. 10, 1900.

Qualifications of directors. — Under the English Companies Act, it was held that if directors were required to be stockholders for a certain period prior to their election, the election of a person who was not a stockholder was void, and the subsequent acquisition of stock did not cure the invalidity of the election. *Barber's Case*, L. R. 5 Ch. Div. 963; *Jenner's Case*, L. R. 7 Ch. Div. 132.

Illegal increase of directors. — If the by-laws of a corporation provide that the annual meeting shall be held in January, that the powers of the company shall be vested in twelve or more directors, and that five directors shall constitute a quorum, the election of seven additional directors at a special meeting of stockholders held in June "for the purpose of making alterations in the by-laws, and for the transaction of such other business as may come before them," at which the by-laws were altered by making four directors a quorum instead of five, is void, and an assessment made at a meeting of the board of directors at which only the additional directors so chosen were present cannot be enforced. *People's Mut. Ins. Co. v. Westcott*, 14 Gray, 440.

Bond of treasurer. — The giving of a bond by the treasurer is not, even under a statute which requires that he shall give a bond, a condition precedent to the organization of a corporation or of its right to sue. *Boston Acid Mfg. Co. v. Moring*, 15 Gray, 211.

Ibid. — *Suit against defaulting treasurer.* — A treasurer who holds money of a corporation is bound to keep it distinct, and if he appropriates it and makes himself a debtor by wrong instead of an agent, he may be sued by the corporation at once, whether his office continues or not. *Marlborough Association v. Peters*, 179 Mass. 61.

Ibid. — *Liability of sureties.* — The sureties on the bond of a treasurer are bound only for the year for which he was chosen, and for such further reasonable time as may

be sufficient for the election and qualification of his successor, and no longer, although the corporation may fail to choose a successor. *Chelmsford Co. v. Demarest*, 7 Gray, 1.

Competency of records. — The records of a corporation are competent evidence of its proceedings if verified by the oath of the clerk of the corporation at the trial, although the clerk, when elected, had not been sworn in accordance with the statute. *Stebbins v. Merritt*, 10 Cush. 27.

Officers holding over. — The provision for officers holding over until their successors are elected does not prevent the termination of an office by mutual understanding before a permanent successor is appointed. *Marlborough Association v. Peters*, 179 Mass. 61. An officer who is re-elected continues in office under the former election until he has duly qualified under the new election. *Hastings v. Blue Hill Turnpike Corporation*, 9 Pick. 79.

Vacancies in board of directors. — The offices created by an amendment to the by-laws increasing the number of directors are not vacancies within the meaning of the statute, but such additional directors must be elected by the stockholders. *In re A. A. Griffing Iron Co.*, 63 N. J. Law, 168.

Remedy against usurping officers. — Mandamus will lie, upon the petition of a manufacturing corporation, to compel the surrender to its lawful officers of its books and papers pertaining to their offices which are held by persons who are actually but unlawfully exercising the functions of those offices under a claim of right, having usurped them under the choice of a minority of the stockholders by the use of illegal votes. *American Railway-Frog Co. v. Haven*, 101 Mass. 398.

SECTION 19. Powers of board of directors, — executive committee. — The board of directors may exercise all of the powers of the corporation, except such as are conferred by law, or by the by-laws of the corporation, upon the stockholders. A corporation may, by its by-laws, provide for

an executive committee to be elected from and by its board of directors. To such committee may be delegated the management of the current and ordinary business of the corporation, and such other duties as the by-laws may prescribe.

Delegation of powers of directors.—The observations of SHAW, C. J., relative to the power of bank directors to delegate their authority, are applicable to directors of other classes of corporations. He says: "A board of directors of the banks of Massachusetts is a body recognized by law. By the by-laws of these corporations, and by a usage, so general and uniform as to be regarded as part of the law of the land, they have the general superintendence and active management of all the concerns of the bank, and constitute, to all purposes of dealing with others, the corporation. We think they do not exercise a delegated authority in the sense in which the rule applies to agents and attorneys, who exercise the powers especially conferred on them and no others. We think, therefore, that a board of directors may delegate an authority to a committee of their own number, to alienate or mortgage real estate; that an authority to convey necessarily implies an authority to execute suitable and proper instruments for that purpose; and, in case of a corporation, to affix the corporate seal to an instrument requiring it." *Burrill v. Nahant Bank*, 2 Met. 163, 166.

Executive committee.—*Powers.*—In the absence of express legislative sanction, the practice, demanded by the necessities of business, of permitting a board of directors to delegate matters of current and ordinary business to an executive committee, has become general and is recognized by the courts. In *Metropolitan Telephone Co. v. Domestic Telegraph Co.*, 44 N. J. Eq. 568, although the court was not called upon to define the limits of the powers of an executive committee, it recognized the rule that directors may delegate authority in the following language (p. 572): "It would intolerably restrict the

operations of a great railroad or manufacturing corporation, if every contract of employment of its workmen or of sale of manufactured articles must be made directly by the directors. The universal practice is to commit such matters of current and ordinary business to committees, superintendents, and clerks. With respect to such business, it may be said that authority to bind the company may be delegated, because it has not been confided to the personal judgment and discretion of the directors." See also *Hoyt v. Thompson's Ex'r*, 19 N. Y. 207; *Sheridan Electric Light Co. v. Chatham Nat. Bank*, 127 N. Y. 517, 522.

Ibid. — It is not necessary that the powers of an executive committee should be definitely determined. If it is charged with the general duty of arranging the details of a new building, a jury is justified in finding, from the knowledge and acquiescence of a board of directors, that the committee acted within the scope of its authority in making an oral agreement varying the terms of the notice to bidders. *McNeil v. Boston Chamber of Commerce*, 154 Mass. 277.

Proxy voting by directors unlawful. — Directors cannot vote by proxy. *Re Portuguese, etc. Co.*, L. R. 42 Ch. D. 160; *Perry v. Tuscaloosa, etc. Co.*, 93 Ala. 364; *Op. Atty. Gen.*, May 27, 1901.

MEETINGS.

SECTION 20. Meetings of stockholders. — There shall be an annual meeting of the stockholders and the time and place of holding it, and the manner of conducting it, shall be fixed by the by-laws; but it shall be held within sixty days after the end of the fiscal year of the corporation. All meetings of stockholders shall be held in the commonwealth. A written or printed notice,¹ stating the place, day and hour thereof, shall be given by the clerk, at least seven days before such meeting, to each stockholder by

¹ See Appendix, Form 14.

leaving such notice with him or at his residence or usual place of business, or by mailing it, postage prepaid, and addressed to each stockholder at his address as it appears upon the books of the corporation. Unless the by-laws otherwise provide, a majority in interest of all stock issued and outstanding and entitled to vote shall constitute a quorum. Notices of all meetings of stockholders shall state the purposes for which the meetings are called. No notice of the time, place or purpose of any regular or special meeting of the stockholders shall be required if every stockholder, or his attorney thereunto authorized, by a writing which is filed with the records of the meeting, waives such notice.

Validity of notice. — The validity of the notice of the meeting is not affected by the inability of a stockholder, by reason of physical or mental infirmity, to receive a legal notice. The law cannot look into the capacity of the stockholders to transact business. *Stebbins v. Merritt*, 10 Cush. 27.

Statement of purposes of meeting. — A notice of a special meeting of a corporation, "for the purpose of making alterations in the by-laws and for the transaction of such business as may come before them," will not justify the election of additional directors if there was no existing by-law limiting the number of directors, and no new by-law was adopted respecting the number to be chosen, or altering the time of holding the annual meeting. *People's Mut. Ins. Co. v. Westcott*, 14 Gray, 440.

Record of presence of quorum unnecessary. — It is unnecessary that the records should show affirmatively that a quorum of stockholders was present at a meeting. If the contrary does not appear, and the record shows that the meeting was duly called and proper notice of it seasonably given, it will be assumed that a sufficient number was present to transact the business for which the meeting was called. *Citizens' Mut. Fire Ins. Co. v. Sortwell*, 8 Allen, 217, 223.

Moderator need not be stockholder.—The election of a person who is not a stockholder as moderator does not affect the validity of the proceedings of a meeting of stockholders. *Stebbins v. Merritt*, 10 Cush. 27.

SECTION 21. Stockholders' meeting called by justice of the peace.—If, by reason of the death or absence of the officers of a corporation or other cause, there is no person duly authorized to call or preside at a legal meeting, or if the clerk or other officer refuses or neglects to call it, a justice of the peace may, upon written application¹ of three or more of the stockholders, issue a warrant to any one of them, directing him to call a meeting by giving such notice as is required by law, and may, by the same warrant, direct him to preside at the meeting until a clerk is duly chosen and qualified, if no officer of the corporation is present who is legally authorized to preside. *Rev. Laws*, c. 109, § 15.

SECTION 22. Special meetings.—Special meetings of the stockholders may be called by the president or by a majority of the directors, and shall be called by the clerk upon written application² of three or more stockholders who are entitled to vote and who hold at least one-tenth part in interest of the capital stock, stating the time, place and purpose of the meeting.

SECTION 23. Voting rights of corporations.—No corporation shall, directly or indirectly, vote upon any share of its own stock.

Voting rights of trustee for corporation.—A corporation which holds its own stock is not entitled to vote upon it, and it is the same if the stock is held on a trust "to hold for the benefit of the corporation;" and, until it has been sold and transferred by authority of the corporation, the

¹ See Appendix, Form 15.

² See Appendix, Form 16.

right of the trustee to vote upon it is suspended. *American Railway-Frog Co. v. Haven*, 101 Mass. 398, 402.

SECTION 24. Voting powers of stockholders, — proxies. — Stockholders who are entitled to vote shall, except as provided in section ninety-three, have one vote for each share of stock owned by them. Capital stock shall not be voted upon if any instalment of the subscription therefor which has been duly demanded under the provisions of section sixteen is overdue and unpaid. Stockholders may vote either in person or by proxy. No proxy which is dated more than six months before the meeting named therein shall be accepted, and no such proxy shall be valid after the final adjournment of such meeting. *Rev. Laws*, c. 110, § 25.

Voting Rights. — “The general rule is, that the books of the corporation are the evidence of the persons who are entitled to the rights and privileges of stockholders in the management of the affairs of the corporation. . . . The books of the corporation are the only evidence of who are the stockholders, and as such are entitled to vote at elections.” *In re St. Lawrence Steamboat Co.*, 44 N. J. Law, 529, 539.

Voting agreements and trusts. — An agreement between a stockholder and a prospective purchaser of his stock at a certain price, by which the stockholder agreed to secure the election of the purchaser as treasurer at a certain salary, is void as against public policy in the absence of evidence that the agreement was assented to by the other stockholders. *Guernsey v. Cook*, 120 Mass. 501.

Ibid. — An agreement by one stockholder, in consideration of a sum of money paid to him by another stockholder, to vote for a certain person as manager of the corporation, and also to vote to increase the salaries of the officers of the corporation, is void as against public policy unless it is assented to by all the stockholders of the corporation. *Woodruff v. Wentworth*, 188 Mass. 809.

Ibid. — An agreement between two of the stockholders of a corporation by which one agreed to give to the other an irrevocable power of attorney upon the agreement of the latter so to vote the stock owned by both that the former would be elected manager at a certain salary, is void as against public policy. *Cone v. Russell*, 48 N. J. Eq. 208.

Ibid. — An open agreement by A to give shares of stock of a corporation to B if he would agree to become a director in the corporation, is not void as against public policy if it appears that A owned or represented all the shares; that B took his office unhampered, and that A's inducement to make the agreement lay wholly in the local importance of B, the strength which it would give to the corporation to have him connected with it, and a legitimate expectation of help in carrying out A's views. *Almy v. Orne*, 165 Mass. 126.

Ibid. — In the case of *Kreisel v. Distilling Co. of America*, 61 N. J. Eq. 5, Chancellor MAGIE stated the rule as follows: "If stockholders, upon consideration, determine and adjudge that a certain plan for conducting and managing the affairs of the corporation is judicious and advisable, I have no doubt that they may, by powers of attorney, or the creation of a trust, or the conveyance to a trustee of their stock, so combine or pool their stock as to provide for the carrying out of the plan so determined upon. But if stockholders combine by either mode to entrust and confide to others the formulation and execution of a plan for the management of the affairs of the corporation, and exclude themselves by acts made and attempted to be made irrevocable for a fixed period, from the exercise of judgment thereon, or if they reserve to themselves any benefit to be derived from such a plan to the exclusion of other stockholders who do not come into the combination, then, in my judgment, such combination and the acts done to effectuate it are contrary to public policy, and other stockholders have a right to the interposition of a court of equity to prevent its being put into operation."

Pooling stock for voting purposes. — A written agreement which recited that the subscribers thereto, being about to purchase a controlling interest of stock of a street railway company, do agree that after the purchase of such stock they will "enter into a pooling contract under the provisions of which all such stock so purchased shall be voted at each annual meeting for a period of not less than three years for such board of directors as shall be named by" certain persons designated "or a majority of them, with power granted to a majority of the persons so named, as pooling committee, to fill any vacancy which may occur from any cause in the membership of such committee," is lawful. *Brightman v. Bates*, 175 Mass. 105.

Ibid. — In *White v. Thomas Inflatable Tire Co.*, 52 N. J. Eq. 178, it was held that a pooling agreement, transferring the eighty-three thousand shares then issued and outstanding to trustees to vote in a certain manner for the election of directors, was void as against a subsequent purchaser of the seventeen thousand shares of treasury stock not included therein.

Casting vote. — A by-law of a corporation which provides that the president "shall preside at all meetings of the stockholders and shall have a casting vote at such meetings," will not enable a presiding officer who has voted on his stock at an election of officers to cast an additional vote and thereby determine the election. *Lamb v. McIntire*, 183 Mass. 367.

Proxy voting. — Under a statute which gives to each stockholder "one vote in person or by proxy," a stockholder who has given a proxy may exercise his right to vote in person. *Chapman v. Bates*, 61 N. J. Eq. 658.

Proxy voting by directors. — Directors cannot lawfully vote by proxy. See authorities, Section 19, *ante*.

SECTION 25. Directors' meetings. — Meetings of the board of directors may be held within or without the commonwealth. Any meeting of the board of directors shall be a legal meeting without notice if each director, by a writing

which is filed with the records of the meeting, waives such notice.

Quorum of directors. — Unless the by-laws otherwise provide, a majority of the directors constitute a quorum, and a majority of the quorum may decide any question upon which they can act. *Sargent v. Webster*, 13 Met. 497.

Presence of president unnecessary. — The presence of the president at a meeting of the board of directors is not essential unless it is required by the charter or by-laws. *Sargent v. Webster*, *ubi supra*.

STOCK.

SECTION 26. Stock certificates. — Each stockholder shall be entitled to a certificate,¹ in form conformable to the provisions of section fourteen, which shall be signed by the president and by the treasurer of the corporation, shall be sealed with its seal and shall certify the number of shares owned by him in such corporation. Each certificate of stock which by the agreement of association or amended agreement of association or, in the case of a corporation created by special law, by its articles of organization is limited as to its voting rights, or which is preferred as to its dividend or as to its share of the principal upon dissolution, shall have a sufficient statement of such limitation or preference plainly written or stamped upon it, and each certificate subsequently issued of any class of stock in the corporation shall have printed or stamped thereon the clause of such agreement of association or amended agreement of association or articles of organization authorizing the issue of stock in any respect preferred or limited. *Rev. Laws*, c. 110, § 27.

Members of corporation joint owners of stock until issue of certificates. — Until the issue of certificates of stock, the

¹ See Appendix, Form 17.

members of a corporation own the stock in common. *Hawes v. Anglo-Saxon Petroleum Co.*, 101 Mass. 385, 397; s. c. 111 Mass. 200.

Remedy to compel issuance or transfer of shares.—Mandamus will not lie to compel the issuance or transfer of certificates of stock of a corporation if the petitioner can be indemnified for the refusal to issue or transfer by the recovery of damages in an action at law. *Murray v. Stevens*, 110 Mass. 95; *Stackpole v. Seymour*, 127 Mass. 104; *Townes v. Nichols*, 73 Maine, 515; *Galbraith v. People's Building Association*, 43 N. J. Law, 389. But if such transfer is fraudulently withheld, a stockholders' meeting will be enjoined until such transfer has been made. *Archer v. American Waterworks Co.*, 50 N. J. Eq. 38.

SECTION 27. Classes of stock.—Every corporation may create two or more classes¹ of stock with such preferences, voting powers, restrictions and qualifications thereof as shall be fixed in the agreement of association or, in the case of a corporation created by special law, in the articles of organization, or in an amendment to said agreement or articles which may be adopted as hereinafter provided. *St.* 1902, c. 441.

SECTION 28. Transfer of stock.—The delivery of a certificate of stock by the person named as the stockholder in such certificate or by a person entrusted by him with its possession for any purpose to a bona fide purchaser or pledgee for value, with a written transfer thereof, or with a written power of attorney to sell, assign or transfer the same, signed by the person named as the stockholder in such certificate, shall be a sufficient delivery to transfer title as against all persons; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the

¹ See Appendix, Form 18.

holder in fact, until it has been recorded upon the books of the corporation, or until a new certificate has been issued to the person to whom it has been so transferred. Such purchaser, upon delivery of the former certificate to the treasurer of the corporation, shall be entitled to receive a new certificate. Stock shall not be transferred upon the books of the corporation, except as provided in section sixteen, if any instalments thereon remain overdue and unpaid. A pledgee of stock transferred as collateral security shall be entitled to a new certificate if the instrument of transfer substantially describes the debt or duty which is intended to be secured thereby. Such new certificate shall express on its face that it is held as collateral security, and the name of the pledgor shall be stated thereon, who alone shall be liable as a stockholder, and entitled to vote thereon. *Rev. Laws*, c. 109, §§ 37, 38; *St.* 1903, c. 423, § 1.

Transfer of stock.—Previously to the *St.* 1881, c. 302, it was settled by the decisions in Massachusetts that, unless a provision of statute or of a charter required a transfer of stock to be made on the books of the corporation, a delivery of the stock certificate, with a written transfer thereof to a bona fide purchaser, was a sufficient delivery to transfer the title as against a subsequent attaching creditor. *Fisher v. Essex Bank*, 5 Gray, 373, 378; *Boston Music Hall Association v. Cory*, 129 Mass. 435, and cases cited. This rule was, however, applicable to comparatively few corporations, and transfers of shares of railroads and manufacturing corporations and of many others could not, by reason of general or special statutory provisions, be made effectual against the right of subsequent attaching creditors unless recorded on the books of the corporation. *Clews v. Friedman*, 182 Mass. 555, and cases cited. The *St.* 1881, c. 302, as re-enacted in *Pub. Sts.* c. 105, § 24, then provided that “No sale, assignment, or transfer of stock in a corporation

shall affect the right of the corporation to pay any dividend due upon the same, or affect the title or rights of an attaching creditor, until it is recorded upon the books of the corporation or a new certificate is issued to the person to whom it has been transferred ; but no attachment of such stock as the property of the vendor, made after such sale, assignment, or transfer, shall defeat the title or affect the rights of the vendee, if such record is made or a new certificate issued within ten days after such transfer is made."

In 1884, the legislature further enacted, St. 1884, c. 229, that "The delivery of a stock certificate of a corporation to a *bona fide* purchaser or pledgee, for value, together with a written transfer of the same, or a written power of attorney to sell, assign and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against all parties ; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation, or a new certificate is issued to the person to whom it has been so transferred." See Rev. Laws, c. 109, § 37 ; St. 1903, c. 423.

The St. 1884, c. 229, was said in *Central Nat. Bank v. Williston*, 138 Mass. 244, not to be "declarative of the meaning of former acts, but the establishment of a new rule, showing a change of legislative intention." See *Newell v. Williston*, 138 Mass. 240.

Accordingly, in *Andrews v. Worcester, Nashua, & Rochester R. R. Co.*, 159 Mass. 64, in which it appeared that A, the owner of stock in a corporation, loaned it to B, to whom a new certificate was issued ; that, a few days afterward, B, having signed the transfer in blank on the back of the new certificate, delivered it to A ; and that subsequently the stock, having been attached in an action against B, was sold on execution, it was held that A was a *bona fide* purchaser for value, and was entitled to a certificate of the stock, and that the purchaser at the execution sale should be restrained from interfering with or preventing the issue

of such certificate. See *Taft v. Church*, 162 Mass. 527, 532.

And in *Clews v. Friedman*, 182 Mass. 555, it was held that the delivery of a stock certificate to a bona fide purchaser, together with a written transfer thereof signed by the owner on the back of the certificate, gave to the purchaser a good title as against a previously attaching creditor.

Transfer as collateral security. — The obvious purpose of this provision of the statute is to enable the pledgee to hold the security without being liable for the debts of the corporation, but it does not exclude other methods of transferring stock as collateral security. *Newton v. Fay*, 10 Allen, 505. If stock has been transferred by an instrument absolute in its terms, a bill in equity may be maintained to redeem it upon parol proof that in reality the transfer was made as collateral security for a debt. *Ibid.*

Personal liability of pledgee. — Unless the provisions of the statute as to stock transferred as collateral security are observed, the pledgee will be liable as a stockholder. *Holyoke Bank v. Burnham*, 11 Cush. 183, 187; *Johnson v. Somerville Dyeing & Bleaching Co.*, 15 Gray, 216, 219; *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563, 571.

Pledgor is the general owner. — By "pledgor" the statute means the general owner of the stock at the date when the certificate is issued. A certificate issued to A, which states that it is "held as collateral for the note of B," who has sold his rights to C, does not comply with the statute; for, although it states that A holds the stock as collateral security, it does not state the name of the general owner. *J. H. Wentworth Co. v. French*, 176 Mass. 442.

SECTION 29. Voting rights of fiduciary holders of stock. — Executors, administrators, guardians, trustees or persons in any other representative or fiduciary capacity may vote as stockholders upon stock held in such capacity.

Voting rights of fiduciary stockholders. — The word "trustees" in this section does not include assignees

under the insolvent law. *Gray v. Coffin*, 9 Cush. 192. A trustee of stock "for the benefit of the corporation" by which it is issued is not entitled to vote thereon. *American Railway-Frog Co. v. Haven*, 101 Mass. 398.

SECTION 30. Stock books; corporate records.—The agreement of association, an attested copy of the articles of organization or of articles in amendment of said agreement or of said articles and of the by-laws, with a reference on the margin of the copy of the by-laws to all amendments thereof, and a true record of all meetings of stockholders shall be kept by every corporation at its principal office in this commonwealth for the inspection of its stockholders. The stock and transfer books of every corporation, which shall contain a complete list of all stockholders, their residences and the amount of stock held by each, shall be kept at an office of the corporation in this commonwealth for the inspection of its stockholders. Said stock and transfer books and said attested copies and records shall be competent evidence in any court of this commonwealth. If any officer or agent of a corporation having charge of such copies, books or records refuses or neglects to exhibit them or to submit them to examination as aforesaid, he or the corporation shall be liable to any stockholder for all actual damages sustained by reason of such refusal or neglect, and the supreme judicial court or the superior court shall have jurisdiction in equity, upon petition of a stockholder, to order any or all of said copies, books or records to be exhibited to him and to such other stockholders as may become parties to said petition, at such a place and time as may be designated in the order. *Rev. Laws*, c. 109, §§ 32–35.

Inspection of stock books.—The right to inspect the stock books is given to stockholders as such, and may

be enforced by *mandamus*. The term "stockholders" not only defines the class upon which the right is conferred, but also indicates the capacity in which the right is to be enjoyed. Therefore a stockholder cannot inspect the books to gratify curiosity, or for a speculative purpose, or to ascertain whether a person against whom he holds a claim owns or has recently transferred stock in the corporation. *State ex rel. O'Hara v. National Biscuit Co.*, 54 Atl. Rep. 241; *In re Steinway*, 159 N. Y. 250; *Phœnix Iron Co. v. Commonwealth*, 113 Penn. St. 563; *Rosenfeld v. Einstein*, 46 N. J. Law, 479; *Fuller v. Alexander Hollander & Co.*, 61 N. J. Eq. 648; *Bruning v. Hoboken Printing & Publishing Co.*, 67 N. J. Law, 119; *Heminway v. Heminway*, 58 Conn. 443.

SECTION 31. Lost certificates.—The directors of a corporation may, unless otherwise provided by the by-laws, determine the conditions upon which a new certificate of stock may be issued in place of any certificate which is alleged to have been lost or destroyed. They may, in their discretion, require the owner of a lost or destroyed certificate, or his legal representative, to give a bond with sufficient surety to the corporation in a sum not exceeding double the market value of the stock to indemnify the corporation against any loss or claim which may arise by reason of the issue of a certificate in place of such lost or destroyed stock certificate. *Rev. Laws*, c. 110, § 28.

SECTION 32. Unclaimed dividends.—Every corporation shall, once in every five years, publish three times successively in a newspaper in the city of Boston, and also in a newspaper in the county in which the principal office of the corporation is located, a list of all dividends which have remained unclaimed for two years or more and the names of the persons to whose credit such dividends stand. *Rev. Laws*, c. 109, § 40.

STOCKHOLDERS' AND DIRECTORS' LIABILITY.

SECTION 33. Liability of stockholders. — The stockholders of a corporation which reduces its capital stock contrary to the provisions of section forty-three shall be liable for the payment of the debts and contracts of the corporation existing at the time of such reduction to the extent of the amount withdrawn and paid to them respectively. The stockholders of a corporation shall also be liable for all money due to operatives for services rendered within six months before demand made upon the corporation and its neglect or refusal to make such payment. A stockholder who pays on a judgment or otherwise more than his proportion of any such debt shall have a claim for contribution against the other stockholders. *Rev. Laws, c. 110, § 59.*

Strict construction of statute. — The creation of an individual liability of stockholders for the debts of a corporation, being a wide departure from established rules of law, founded on considerations of public policy and depending solely on provisions of positive law, is to be construed strictly, and is not to be extended beyond the limits to which it is plainly carried by the provisions of the statutes. *Gray v. Coffin*, 9 Cush. 192, 199. Consequently, a liability other than such as is imposed by statute cannot be created by a by-law of the corporation. *Trustees of Free Schools in Andover v. Flint*, 13 Met. 539.

Oral promise of guaranty void. — An oral promise of a stockholder to guarantee the debts of a corporation would be within the statute of frauds, and not binding on him. *Trustees of Free Schools in Andover v. Flint, ubi supra.*

Who are stockholders. — “When a corporation has been once created according to law, the incorporated associates who hold the corporate franchise are members of the corporation; and a subscriber for shares, although he has received no certificate of stock, or the stock has not even been divided into shares, is a member of the corporation,

and a stockholder, within the meaning of a statute making the stockholders of the corporation personally liable for its debts." GRAY, J., in *Hawes v. Anglo-Saxon Petroleum Co.*, 101 Mass. 385, 395; *Curtis v. Harlow*, 12 Met. 3, 6.

What are debts and contracts. — Debts include claims for unliquidated damages, *Mill Dam Foundery v. Hovey*, 21 Pick. 417, 455; for unpaid taxes, *Felker v. Standard Yarn Co.*, 148 Mass. 226; and for a judgment against the corporation for damages caused by its refusal to deliver certificates of stock to a stockholder, *Wyman v. American Powder Co.*, 8 Cush. 168, 182; but they do not include liabilities for torts which have not been reduced to a judgment, nor liabilities for damages arising from the infringement of letters patent before judgment therefor against the corporation, *Childs v. Boston & Fairhaven Iron Works*, 137 Mass. 516; nor debts of a corporation to one of its stockholders. *Thayer v. Union Tool Co.*, 4 Gray, 75; *Potter v. Stevens Machine Co.*, 127 Mass. 592.

When liability attaches. — Prior to St. 1862, c. 218, the personal liability attached to all persons who were stockholders at the time that the debt which was sought to be enforced against them was contracted, although they had ceased to be stockholders before proceedings were instituted, *Mill Dam Foundery v. Hovey*, 21 Pick. 417, 454; *Holyoke Bank v. Burnham*, 11 Cush. 183, 188; *Johnson v. Somerville Dyeing & Bleaching Co.*, 15 Gray, 216; or at the time when the liability was sought to be enforced, although the debt was incurred prior to their membership, *Curtis v. Harlow*, 12 Met. 3; but not to persons who became stockholders after a debt was contracted and ceased to be such before it became due and payable. *Holyoke Bank v. Burnham*, *ubi supra*. The St. 1862, c. 218, § 4, and subsequent enactments (St. 1870, c. 224, § 42; Pub. Sts. c. 106, § 64; Rev. Laws, c. 110, § 62), authorized the filing of a creditors' bill in equity against the corporation and against "all persons who were stockholders therein at the time of the commencement of the suit" in which judgment was recovered against the corporation; but by the provisions of

Section 36 of this act, the creditors' bill is to be brought against those stockholders only "who are liable." In the case of a liability by reason of an unlawful withdrawal of capital stock, the stockholders who are liable are easily capable of ascertainment, because they are only such as receive the amount withdrawn; but in the case of liability for operatives' wages, the statute is obscure, and leaves it uncertain whether persons who were stockholders when the services were rendered, when payment was refused or when an action against the corporation was commenced, are to be held answerable.

Cases in which the stockholder is liable. — A stockholder is personally liable although he holds the stock merely as pledgee, unless he complies with the provisions of Section 28 relative to stock transferred as collateral security, *Holyoke Bank v. Burnham*, 11 Cush. 183, 187; *Johnson v. Somerville Dyeing & Bleaching Co.*, 15 Gray, 216, 219; *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563, 571; but, in such case, he will be absolved from liability if he retransfers the stock in pursuance of an agreement so to do, made contemporaneously with the original transfer, although the retransfer was made for the express purpose of escaping liability. *Holyoke Bank v. Burnham*, 11 Cush. 182. He will also be liable although, having indorsed a note of the corporation and subsequently become bankrupt, he was released from his liability as indorser on proceedings for a composition, *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563; or although he may have received his discharge in bankruptcy or insolvency under proceedings begun before the creditors' bill in equity was filed or the action against the corporation was commenced, *Bangs v. Lincoln*, 10 Gray, 600; *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563; or although the plaintiffs to the creditors' bill may have proved their demands in bankruptcy against the corporation and received dividends thereon. *Barre Nat. Bank v. Hingham Mfg. Co.*, *ubi supra*.

If a judgment has been recovered against the corporation for money due for operatives' wages, a stockholder,

upon a bill in equity filed under the provisions of Section 86 to enforce the personal liability of stockholders, cannot be allowed to set off certain payments by him of debts due to operatives. *Burnap v. Haskins Steam Engine Co.*, 127 Mass. 586, 592.

Extent of liability. — The liability as stockholders is for all the debts of the corporation; but no stockholder, according to the provisions of Section 88, is liable beyond the amount of the par value of the stock held by him when the corporation was adjudicated a bankrupt or when the action in which the judgment was recovered was commenced. *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563, 566.

Several liability. — The Revised Laws, c. 110, §§ 59, 63, and earlier statutes (Pub. Sts. c. 106, §§ 61, 65; St. 1870, c. 224, §§ 39, 48; St. 1862, c. 218, §§ 2, 5) provided that stockholders should be "jointly and severally liable" for the debts of the corporation, but that no stockholder should be liable to pay a larger sum than the amount of stock held by him at that time at its par value. Inasmuch, however, as a joint and several liability of stockholders for a debt imports that each stockholder is liable for the whole debt *in solido*, the two provisions were held in *Burnap v. Haskins Steam Engine Co.*, 127 Mass. 586, to be inconsistent, and stockholders were held liable only severally in proportion to the shares held by them respectively. But if certificates of stock had not been issued by the corporation, the stockholders would have owned the stock jointly, and would therefore have been jointly and severally liable for the whole amount of the debts. *Hawes v. Anglo-Saxon Petroleum Co.*, 111 Mass. 200. It will be observed that the words "jointly and severally" do not occur in Section 83 of this act.

Contribution. — The judgment mentioned in this section is the judgment recoverable under the provisions of Section 86, and not the joint decree in the suit in equity authorized by that section. This provision contemplates the case of a stockholder who, either after judgment against the corporation or before, pays any of the debts for which the

stockholders are liable without the expense of a litigation in equity, and gives him the right in such case to claim contribution. There is no occasion for providing that, if he pays a joint judgment against all, he shall have a contribution, because he would have a right of contribution independently of the statute. *Burnap v. Haskins Steam Engine Co.*, 127 Mass. 586, 591.

Ibid.—Upon a suit in equity for contribution, the amount of liability of each stockholder is to be determined by an apportionment of the debt among the shares of stockholders who are solvent and who are within the jurisdiction of the court. *Cary v. Holmes*, 16 Gray, 127; s. c. 2 Allen, 498. See *Whitman v. Porter*, 107 Mass. 522, 524. Under Rev. Sts. c. 88, and St. 1851, c. 315 (Gen. Sts. c. 60, §§ 32–35), officers of a corporation who had been compelled to pay corporate debts could not maintain a bill in equity for contribution against stockholders. *Stone v. Fenno*, 6 Allen, 579.

Before St. 1829, c. 58, a stockholder in a manufacturing corporation who voluntarily paid a debt of the corporation for which all the stockholders were personally liable had no remedy against the other stockholders for contribution either under the statute or at common law. *Andrews v. Callender*, 18 Pick. 484.

Waiver of liability.—The personal liability of stockholders under this section and of officers under the two following sections may be waived by an oral agreement made by the corporation and the creditor contemporaneously with the contracting of the debt; and such agreement is admissible in defence to a suit in equity brought to enforce such personal liability. *Brown v. Eastern Slate Co.*, 184 Mass. 590.

Stockholders of foreign corporations.—Generally, no proceeding at law or equity will lie in Massachusetts to enforce the personal liability imposed upon officers or stockholders of a foreign corporation by the laws of the State by which the corporation is created. *Erickson v. Nesmith*, 15 Gray, 221; s. c. 4 Allen, 238; *Halsey v.*

McLean, 12 Allen, 438; *Smith v. Mut. Life Ins. Co.*, 14 Allen, 336, 342; *New Haven Horse Nail Co. v. Linden Spring Co.*, 142 Mass. 349; *Bank of North America v. Rindge*, 154 Mass. 203; *Coffing v. Dodge*, 167 Mass. 281. But, in *Hancock Nat. Bank v. Ellis*, 166 Mass. 414, the court, upon demurrer, sustained a declaration to enforce the liability of a stockholder in a Kansas corporation. In that case, the declaration alleged, and the demurrer admitted, that, by the statutes of Kansas, as interpreted by the decisions of the highest court of that State, the liability was contractual, arising upon the contract of subscription of the defendant for his stock, whereby he guaranteed to the judgment creditors who first pursued their remedy under the statute the payment sought to be recovered; and that an action to enforce such liability was transitory, and could be brought in any court of general jurisdiction in the State where personal service could be made upon the stockholder. By a subsequent decision in the same case (see 172 Mass. 39) the court held that, upon the evidence, such liability could be enforced here. See *Broadway Nat. Bank v. Baker*, 176 Mass. 294.

In *Howarth v. Lombard*, 175 Mass. 570, a stockholder in a State bank of the State of Washington, who was resident in Massachusetts, was held liable in an action brought by and in the name of the receiver of the bank for an assessment under a statute of the State of Washington, which provided "that the stockholders of every bank incorporated under this act or the territory of Washington shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporation or association accruing while they remain such stockholders, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares."

The court, in an elaborate opinion, reviewed the authorities, and stated the principles by which the question of enforcing the statutory liability of stockholders of foreign corporations in the courts of this commonwealth should be determined.

The court say: "The fundamental question is whether there is a substantive right originating in one State and a corresponding liability which follows the person against whom it is sought to be enforced into another State. Such a right, arising under the common law, is enforceable everywhere. Such a right, arising under a local statute, will be enforced *ex comitate* in another State, unless there is a good reason for refusing to enforce it. It will be enforced, not because of the existence of the statute, but because it is a right which the plaintiff legitimately acquired, and which still belongs to him. If the statute creating the right is against the policy of the law of the neighboring State, that is a sufficient reason for refusing to enforce the right there. In the neighboring State, in such a case, it will not be considered a right. If the enforcement of a statutory right in a neighboring State in the manner proposed will work injustice to its citizens, considerations of comity do not require the recognition of it by the courts of that State. If the right by the terms of the statute creating it is to be enforced by prescribed proceedings within the State, the right is limited by the statute, and can only be enforced in accordance with the statute. If it is of such a kind that, with a due regard for the interests of the parties, a proper remedy can be given only in the jurisdiction where it is created, it will not be enforced elsewhere. But if there is a substantive right of a kind which is generally recognized, courts through comity ought to regard it, and enforce it as well when it arises under a statute of another State as when it arises at common law, unless there is some good reason for disregarding it." Although the liability in that case was founded on a statute, it was said that, as construed by the Supreme Court of Washington, there was a contractual liability entering into it. "It is not the statute which directly and proximately creates the liability; it is the voluntary action of the stockholders under the statute, followed by action of creditors which is founded on the action of the stockholders. The statute was in existence before the Traders' Bank was organized. The stockholders sub-

scribed for their stock with full knowledge of the statute, and they must be held impliedly to have agreed to be bound by it. The statute enters into and forms a part of their undertaking as stockholders, and their implied agreements in that relation conform to it. It is to be noticed under this statute that stockholders, merely by subscribing for stock, without an express promise to pay for it, are bound in all corporations to pay the amount of their unpaid subscriptions, if needed, and in banking corporations to pay as much more, if it is called for to satisfy creditors." Such a liability "is a liability which corresponds to a substantive right that grows out of voluntary action which is in the nature of an implied promise to the corporation that is being formed, and to those who may become creditors of the corporation. . . . Such a right ought to be enforceable." The statute having prescribed no method of enforcing it, it was said that, as construed by the Supreme Court of Washington, no action could be maintained against a stockholder until after proceedings in a court of Washington, showing the insolvency of the corporation and the need of payment to satisfy the claims of creditors. "After such proceedings, and an adjustment of the rights and liabilities of the corporation, of creditors, and of stockholders, collection can be made from stockholders wherever they are found."

It is a defence to an action against a stockholder in a Kansas corporation to enforce his personal liability either that he holds against the corporation a debt which he bought in good faith at its face value of an amount equal to or greater than his original liability, or that he has paid such a debt for the benefit of the corporation and has received nothing in reimbursement; and the fact that he has taken no formal assignment of the note which is evidence of the debt, or of the mortgage by which the note is secured, is immaterial, since it is the defendant's equitable relation to the corporation in reference to its debts, and not his right to sue in an action at law, which gives him his defence against the plaintiff. *Sargent v. Stetson*, 181 Mass. 371.

The statute of limitations of Kansas is not a defence to an action brought in this commonwealth to enforce the statutory personal liability of a stockholder in a Kansas corporation who is resident in Massachusetts, *Broadway Nat. Bank v. Baker*, 176 Mass. 294; nor does such statute deprive the defendant in such action of his right to set up in defence thereof his equitable ownership of a note of the corporation, or his payment of a debt thereof. *Sargent v. Stetson*, 181 Mass. 371.

SECTION 84. Liability of president, treasurer and directors. — The president, treasurer and directors of every corporation shall be jointly and severally liable for all the debts and contracts of the corporation contracted or entered into while they are officers thereof if any stock is issued in violation of the provisions of section fourteen, or if any statement or report which is required by the provisions of this act is made by them which is false in any material representation and which they know to be false; but only the officers who sign such statement or report shall be so liable. *Rev. Laws*, c. 110, § 58.

Debts and contracts. — The officers of a corporation will be liable under this section for debts of the corporation existing at the time of making a false statement or report, as well as for debts incurred thereafter, *Felker v. Standard Yarn Co.*, 148 Mass. 226; but, under the provisions of this act, probably not for debts contracted before they became officers of the corporation. The liability of a corporation either as drawer of a bill of exchange or under an express agreement to indemnify an accommodation acceptor for his payment of a bill of exchange drawn for its benefit by a third person, is a debt of the corporation, and it is created at the time of the acceptance. *Byers v. Franklin Coal Co.*, 106 Mass. 131. Under a statute rendering the president and directors of a corporation personally liable for its debts to the extent of the excess of its debts over its capital, it was held that, upon a bill in equity brought by a

judgment creditor of the corporation to enforce such personal liability, debts due from the corporation to one of the defendant directors should be counted in computing such excess. *Thacher v. King*, 156 Mass. 490. But such director could not share with other creditors who were not directors in the amount which he, or he and other directors, might be compelled to pay towards the debts in consequence of such excess. *Ibid.*

Extent of liability.—The liability of officers under Section 34 is apparently for the full amount of the debts which are contracted while they are officers of the corporation, and the liability of directors under Section 35 is for the debts to the extent of the unlawful dividend, or of the loan to a stockholder or director, without reference to the amount of stock held by them. *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563, 566.

Knowledge of falsity.—Under statutes which subjected officers of a corporation to personal liability for making a false certificate, "knowing it to be false," it was held that it must be made to appear that the statement was wilfully false; that is, made intentionally with a purpose to deceive. *Stebbins v. Edmands*, 12 Gray, 203; *Felker v. Standard Yarn Co.*, 150 Mass. 264; *Heard v. Pictorial Press*, 182 Mass. 530; *International Paper Co. v. Gazette Co.*, 182 Mass. 578.

Contribution.—The officers of a corporation who have been compelled to pay the corporate debts cannot maintain a bill in equity for contribution against the stockholders. *Stone v. Fenno*, 6 Allen, 579. Whether they can require contribution *inter sese* for debts which they have been required to pay under the provisions of Sections 34, 35, or whether the common-law principle that one wrongdoer, who has paid the damages recovered on account of the wrongful act of both, is not entitled to contribution from the other applies here, *quære*. See *Nickerson v. Wheeler*, 118 Mass. 295.

Irregularity of election no defence.—Acting officers of a corporation can take no advantage of irregularities or

informalities of the meetings at which they were elected to avoid personal liability for the debts of the corporation. *Thayer v. New England Lithographic Steam Printing Co.*, 108 Mass. 523.

Discharge in bankruptcy or insolvency no defence. — The personal liability of officers of a corporation for its debts cannot be proved against their estates in bankruptcy or insolvency, and consequently their discharge in bankruptcy or insolvency does not release them from such liability. *Bangs v. Lincoln*, 10 Gray, 600; *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563. A director of a corporation who, after indorsing its note, becomes bankrupt, and, on proceedings for composition, receives a release from liability as indorser, is still personally liable on the note or other debts of the corporation. *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563.

SECTION 35. Liability of directors. — The directors of every corporation shall be jointly and severally liable for the debts and contracts of the corporation in the following cases : —

First. For declaring or assenting to a dividend if the corporation is, or thereby is rendered, bankrupt or insolvent, to the extent of such dividend.

Second. For debts contracted between the time of making or assenting to a loan to a stockholder or director and the time of its repayment, to the extent of such loan.

Directors who vote against declaring said dividend or who vote against making said loan shall not be liable as aforesaid. *Rev. Laws*, c. 110, § 58.

See notes to the preceding section.

SECTION 36. Enforcement of liability. — A stockholder or officer in a corporation shall not be held liable for its debts or contracts unless it has been duly adjudicated bankrupt or unless a judgment has been recovered against it and it has

neglected, for thirty days after demand made on execution, to pay the amount due, with the officer's fees, or to exhibit to the officer real or personal property belonging to it and subject to be taken on execution, sufficient to satisfy the same, and the execution has been returned unsatisfied.

After such adjudication of bankruptcy or after the execution has been so returned, the clerk, or other officer who has charge of the records of such corporation, upon request of a creditor of the corporation or of his attorney, shall furnish to him a certified list of the names of all persons who were officers and stockholders in such corporation at the time when the liability to be enforced against them personally accrued. The supreme judicial court or the superior court shall have jurisdiction in equity to compel such list to be furnished. After an adjudication of bankruptcy or after the execution has been so returned, any creditor may file a bill in equity in the supreme judicial court or the superior court in behalf of himself and of all other creditors of the corporation, against it and all persons who are liable to the plaintiff as stockholders or officers for the recovery of the money due from the corporation to himself and to the other creditors for which the stockholders or officers may be personally liable by reason of any act or omission on the part of the corporation or any of the other defendants, setting forth the bankruptcy of the corporation, or the judgment and proceedings thereon, and the grounds upon which it is expected to charge the stockholders or officers personally. *Rev. Laws*, c. 110, §§ 60, 62.

Existing remedies preserved.—The right to maintain a bill in equity to enforce the liability of the officers or stockholders of a corporation under Revised Laws, c. 110, §§ 58–68, if any had vested before the passage of this act, is not taken away by it, although the bill may not have been filed

until after its passage. See §§ 2, 96. *Pope v. Salamanca Oil Co.*, 115 Mass. 286, 291.

Recovery of judgment. — The recovery of a judgment in *scire facias* which is brought against a corporation after it has been charged as a trustee in a trustee process is a sufficient judgment under this section. *Norfolk v. American Steam Gas Co.*, 103 Mass. 160.

Conclusiveness of judgment. — A judgment recovered against a corporation under this section, if not conclusive, is at least *prima facie* evidence that the account was one on which the corporation was liable, even though the account bore date three days before the first meeting of the corporators. *Hawes v. Anglo-Saxon Petroleum Co.*, 101 Mass. 385. But the judgment against the corporation is conclusive against the stockholders or officers as establishing the existence of the debt for which it is rendered. *Thayer v. New England Lithographic Steam Printing Co.*, 108 Mass. 523.

Merger of debt by judgment. — A judgment against a corporation upon a simple contract debt for which its officers are personally liable does not so merge the debt as to extinguish their liability. *Byers v. Franklin Coal Co.*, 106 Mass. 181.

Bankruptcy or insolvency of the corporation. — Inasmuch as corporations were not entitled to a discharge from their debts under the insolvent laws of Massachusetts or under the United States bankruptcy act of 1867, it was formerly held that the insolvency or bankruptcy of a corporation, the proof of a claim against it and the receipt of a dividend thereon, did not preclude the creditor from recovering judgment for the unpaid balance. *Coburn v. Boston Papier Maché Mfg. Co.*, 10 Gray, 243; *Johnson v. Somerville Dyeing & Bleaching Co.*, 15 Gray, 216; *Folger v. Columbian Ins. Co.*, 99 Mass. 267; *Chamberlain v. Huguenot Mfg. Co.*, 118 Mass. 532; *Hudson v. J. B. Parker Machine Co.*, 173 Mass. 242; *Clarke v. Warwick Cycle Mfg. Co.*, 174 Mass. 434. Under the bankruptcy act of 1898, however, by which a corporation is entitled to a discharge, the court refused to allow a judgment to be entered against a cor-

poration which had obtained its discharge for the purpose of enforcing the liability of directors under Pub. Sts. c. 106, § 60 (Rev. Laws, c. 110, § 58). *Train v. Marshall Paper Co.*, 180 Mass. 513. It will be observed that under this act the recovery of a judgment against a corporation which has been adjudicated a bankrupt is not a condition precedent to filing a creditors' bill.

The bankruptcy of the corporation when demand is made on the execution, and the pendency of bankruptcy proceedings against it when the bill in equity is filed against it and its officers or stockholders, constitute no defence so far as the directors or stockholders are concerned. *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563. And the fact that a creditor has proved his claim in bankruptcy against the corporation and has received dividends thereon is no bar to a subsequent bill in equity by him. *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563.

Bankruptcy of officers or stockholders. — The fact that officers or stockholders had received certificates of discharge in bankruptcy under proceedings begun before the bill in equity was filed and before the action in which judgment was recovered was commenced is no defence. *Bangs v. Lincoln*, 10 Gray, 600; *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563.

Demand on execution. — If a corporation has a manufactory in one county and a usual place of business in another county, a demand made in the latter county on the execution issuing on a judgment recovered against the corporation as provided in this section is sufficient; and evidence that the meetings of stockholders and directors are held, and the official records, cash book, stock ledger, and certificate book are kept, in the latter county, and that the corporation blanks contained a printed heading giving the name of the corporation and the number of the street in the city where the treasurer transacted his private business in that county, is sufficient to warrant a finding that the corporation has a usual place of business there. *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563.

Return of execution unsatisfied. — A return of the execution unsatisfied on the same day that demand is made thereon does not render the officers or stockholders liable, but opportunity must be kept open for thirty days for the corporation to exhibit property which might be taken upon it; and it is incompetent for the plaintiff to offer proof that the corporation neglected to pay the debt, made no attempt to exhibit property, and had none to exhibit. *Priest v. Essex Hat Mfg. Co.*, 115 Mass. 380.

Who are creditors. — The remedy provided by this section is intended only for creditors who are not members of the corporation, and it cannot be availed of by creditors who are also stockholders or officers. *Thayer v. Union Tool Co.*, 4 Gray, 75; *Potter v. Stevens Machine Co.*, 127 Mass. 592; *Thompson v. Bemis Paper Co.*, 127 Mass. 595; *Thacher v. King*, 156 Mass. 490.

Discovery of names of officers and stockholders of foreign corporations. — After a judgment has been recovered against a foreign corporation in the State by which it was created, a bill in equity may be maintained in this commonwealth against the officers of such corporation for discovery of the names of its stockholders and of the number of shares held by each, if the officers reside in this commonwealth and the books of the corporation are kept here, in order to enforce by suit in the other State the personal liability imposed upon such stockholders by the laws thereof. *Post & Co. v. Toledo, etc. R. R. Co.*, 144 Mass. 341.

Bill in equity. — Corporation a necessary party. — It is necessary that the corporation should be made a party defendant to a bill in equity brought under the provisions of this section. If it is not, the bill is bad on demurrer. *Pope v. Leonard*, 115 Mass. 286.

Ibid. — *To be brought in behalf of plaintiff and all other creditors.* — The statutory remedy must be strictly pursued, and the bill must be brought by the creditor "in behalf of himself and of all other creditors of the corporation." An allegation that there are no other creditors known to the plaintiff is not sufficient to excuse him from bringing his suit

as required by the statute. *Moore v. Reynolds*, 109 Mass. 473; *Pope v. Leonard*, 115 Mass. 286. A bill brought by several plaintiffs in behalf of "themselves" and all other creditors complies with the requirements of the statute. *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563.

Ibid. — *Pleading. — Multifariousness.* — A bill which embraces claims against stockholders under Section 83, and against officers under Sections 84, 85, is multifarious. *Cambridge Water Works v. Somerville Dyeing & Bleaching Co.*, 14 Gray, 193; *Pope v. Leonard*, 115 Mass. 286; *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563, 566. But a bill which seeks to hold the president, treasurer, and directors liable on both the grounds authorized by Section 84, or the directors liable on both the grounds authorized by Section 85, is not multifarious. *Pope v. Salamanca Oil Co.*, 115 Mass. 286, 289. See *Hudson v. J. B. Parker Machine Co.*, 178 Mass. 242.

Ibid. — *Averment of recovery of judgment.* — The bill in equity should aver that a judgment has been recovered against the corporation. *McRae v. Locke*, 118 Mass. 269.

Ibid. — *Averment of par value of shares unnecessary.* — The bill in equity need not allege the par value of the shares. If that question proves to be material, it is a proper subject of inquiry by the master. *Hawes v. Anglo-Saxon Petroleum Co.*, 101 Mass. 385.

Proof of regularity of incorporation. — Upon a bill in equity to charge personally the officers of a corporation, proof that they had signed and filed certain certificates required by law, declaring the corporate character of the company, that the corporation had engaged in business in its corporate name, contracted debts and suffered the judgment set forth in the bill, is conclusive as against such officers of the corporate character of the company. *Priest v. Essex Hat Mfg. Co.*, 115 Mass. 380; *First Nat. Bank of Salem v. Almy*, 117 Mass. 476. But it seems that in a suit against stockholders under this section they may deny that the corporation has been duly organized. *Utley v. Union Tool Co.*, 11 Gray, 139.

Proof of simple contract debts. — The plaintiffs in a suit in equity brought under this section may prove not only their judgment debt, but a further debt due to them on simple contract. *Thacher v. King*, 156 Mass. 490.

Parol evidence to identify debt. — Parol evidence is admissible at the hearing upon the bill in equity, in connection with the record of the judgment, to identify the debt and to show that it was incurred during the time of the default of the officers of the corporation. *Norfolk v. American Steam Gas Co.*, 108 Mass. 404.

Costs. — Stockholders or officers against whom a decree is entered upon a bill in equity brought under this section are jointly liable for costs, *Crease v. Babcock*, 10 Met. 525, 568; *Norfolk v. American Steam Gas Co.*, 108 Mass. 404; *Burnap v. Haskins Steam Engine Co.*, 127 Mass. 586; but they are not liable for costs accruing in a *scire facias* against the corporation which has been charged as trustee in a trustee process. *Norfolk v. American Steam Gas Co.*, 108 Mass. 404.

Contribution. — The judgment mentioned in the provision of Section 33, *ante*, relative to contribution does not include the joint decree in the suit in equity under this section. "There is no occasion for providing that, if a stockholder pays a joint judgment against all, he shall have contribution, because he would have a right of contribution independently of the statute." *Burnap v. Haskins Steam Engine Co.*, 127 Mass. 586, 591.

Pending suits. — It is no objection to the maintenance of a suit in equity to enforce the liability of officers of a corporation that another suit in equity against them to enforce their liability as stockholders is pending. *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563.

SECTION 37. Procedure. — Such suit shall not be discontinued by the plaintiff except by order of the court after notice to other creditors. It shall not abate by reason of the non-joinder of persons liable as defendants, unless the

plaintiff, after notice by plea or answer of their existence, unreasonably neglects to make them parties; nor shall it abate by reason of the death of a defendant, but his estate shall be liable in the hands of his executor or administrator, who may voluntarily appear, or who may be summoned by the plaintiff, to defend the suit. *Rev. Laws, c. 110, §§ 65-67.*

Survival of liability.—The liability of an officer or stockholder of a corporation under Sections 33-35 continues after his death against his property in the hands of his executor or administrator. *Hudson v. J. B. Parker Machine Co., 173 Mass. 242.*

Non-joinder of defendants.—The objection that all the officers or stockholders of a corporation are not made defendants to a bill in equity brought under the provisions of Section 36 cannot be taken by demurrer although the bill shows that not all of them have been joined, but the objection must be taken by plea or answer. *Essex Company v. Lawrence Machine Shop, 10 Allen, 352.*

SECTION 38. Apportionment of assessment.—Such sums as may be decreed to be paid by the stockholders in such suit shall be assessed upon them in proportion to the amounts of stock held by them respectively at the time when their liability accrued; but a stockholder shall not be liable to pay a larger amount than the amount of stock held by him at that time at its par value as fixed at the time when the liability to be enforced against him personally accrued. *Rev. Laws, c. 110, § 63.*

Extent of liability.—The liability as stockholders is for all the debts of the corporation; but, under the provisions of this section, no stockholder is to be liable beyond the par value of his stock. *Barre Nat. Bank v. Hingham Mfg. Co., 127 Mass. 568, 566.*

SECTION 39. Defence of actions by stockholders. — If, in an action against a corporation, it appears to the court that one of the purposes of the action is to obtain a judgment against the corporation in order to enforce an alleged liability of a person who has been or is a stockholder or officer thereof, such stockholder or officer may be permitted, on petition, to defend such action, and the court may require of him, or of a person in his behalf, a bond with sufficient surety or sureties conditioned to pay to the plaintiff all costs which may accrue and be taxed to him after the filing of said petition.

Prior to St. 1867, c. 36, of which this section is a reenactment, a stockholder or former officer in a corporation had no authority to appear and defend an action against the corporation, although he might ultimately be held personally liable for the claim. *Johnson v. Somerville Dyeing & Bleaching Co.*, 15 Gray, 216, 218; *Byers v. Franklin Coal Co.*, 14 Allen, 470.

AMENDMENTS AFTER ORGANIZATION.

SECTION 40. Changes in agreement of association and articles of organization; sale of assets. — Every corporation may, at a meeting duly called for the purpose, by the vote of a majority of all its stock, or, if two or more classes of stock have been issued, of a majority of each class outstanding and entitled to vote, authorize an increase or a reduction of its capital stock and determine the terms and manner of the disposition of such increased stock, may authorize a change of the location of its principal office or place of business in this commonwealth or a change of the par value of the shares of its capital stock, or may authorize proceedings for its dissolution under the provisions of section fifty-one.

It may, at a meeting duly called for the purpose, by the vote of two-thirds of all its stock, or, if two or more classes of stock have been issued, of two-thirds of each class of stock outstanding and entitled to vote, or by a larger vote if the agreement of association so requires, change its corporate name, the nature of its business, the classes of its capital stock subsequently to be issued and their voting power, or make any other lawful amendment or alteration in its agreement of association or articles of organization, or sell, lease or exchange all its property and assets, including its good will and its corporate franchise, upon such terms and conditions as it deems expedient. *Rev. Laws*, c. 109, §§ 7, 29, 52; c. 110, §§ 31, 34, 47; *St.* 1902, c. 441.

Disposition of increased stock. — In the absence of any statute prescribing the method of the disposition of increased stock, it may be allotted among the stockholders, or it may be sold from time to time as the corporation needs money. It may be sold by subscription, and the stockholders may be entitled to a preference in subscribing, and they may sell their rights; and, unless a statute or a by-law requires that the new stock shall all be subscribed for before it is created or issued, there is no implied condition that all the stock created shall be subscribed for or issued. *Eaton v. Pacific Nat. Bank*, 144 Mass. 260, 275.

Sale of property of corporation. — Before the passage of this act, it was held that, at common law, the directors of a manufacturing corporation might, pursuant to the vote of a majority of the stockholders, though against the protest of a minority, sell the whole property of the corporation to a new corporation, and take in payment therefor the shares of the new corporation, which should be distributed among those stockholders who were willing to receive them. *Treadwell v. Salisbury Mfg. Co.*, 7 Gray, 393, 405.

SECTION 41. Articles of amendment. — Articles of amendment¹ signed and sworn to by the president, treasurer and a majority of the directors shall, within thirty days after said meeting, be prepared, setting forth such amendment or alteration, and stating that it has been duly adopted by the stockholders. Such articles shall be submitted to the commissioner of corporations, who shall examine them in the same manner as the original articles of organization. If he finds that they conform to the requirements of law, he shall so certify and indorse his approval thereon, and they shall thereupon be filed in the office of the secretary of the commonwealth, who, upon payment of the fee hereinafter provided, shall cause them, and the indorsement thereon, to be recorded. No amendment or alteration of the agreement of association or articles of organization shall take effect until said articles of amendment shall have been filed in the office of the secretary of the commonwealth as aforesaid.

SECTION 42. Increase of capital stock. — If an increase in the total amount of the capital stock of any corporation shall have been authorized by vote of its stockholders in accordance with the provisions of section forty, the articles of amendment² shall also set forth: (a) the total amount of capital stock already authorized; (b) the amount of stock already issued for cash payable by instalments and the amount paid thereon; and the amount of full paid stock already issued for cash, property, services or expenses; (c) the amount of additional stock authorized; (d) the amount of such stock to be issued for cash, property, services or expenses, respectively; (e) a description of said property and a statement of the nature of said services or expenses, in the manner required by the provisions of section eleven.

¹ See Appendix, Form 19.

² See Appendix, Form 20.

SECTION 43. Reduction of capital stock. — If a reduction of the capital stock of any corporation shall have been authorized by its stockholders in accordance with the provisions of section forty, the articles of amendment¹ shall also set forth (a) the total amount of capital stock already authorized and issued; (b) the amount of the reduction and the manner in which it shall be effected; (c) a copy of the vote authorizing the reduction. No reduction of capital stock shall be lawful which renders the corporation bankrupt or insolvent, but the capital stock may be reduced by the surrender by every stockholder of his shares and the issue to him in lieu thereof of a proportional decreased number of shares, if the assets of such corporation are not reduced thereby, without creating any liability of the stockholders of such corporation in case of the subsequent bankruptcy of such corporation.

SECTION 44. Remedy of minority stockholder. — A stockholder in any corporation which shall have duly voted to sell, lease or exchange all its property and assets or to change the nature of its business in accordance with the provisions of section forty, who, at the meeting of stockholders, has voted against such action may, within thirty days after the date of said meeting, make a demand in writing upon the corporation for payment for his stock. If the corporation and the stockholder cannot agree upon the value of the stock at the date of such sale, lease, exchange or change, such value shall be ascertained by three disinterested persons, one of whom shall be named by the stockholder, another by the corporation and the third by the two thus chosen. The finding of the appraisers shall be final, and if their award is not paid by the corporation within thirty days after it is made, it may be recovered by the stockholder from the corporation in an

¹ See Appendix, Form 21.

action of contract. Upon payment by the corporation to the stockholder of the agreed or awarded price of his stock, the stockholder shall forthwith transfer and assign the stock certificates held by him at, and in accordance with, the request of the corporation.

ANNUAL REPORTS.

SECTION 45. Form of annual report of condition. — Every corporation shall annually, within thirty days after the date fixed in its by-laws for its annual meeting last preceding the date of such report, or within thirty days after the final adjournment of said meeting, but not more than three months after the date so fixed for said meeting, prepare a report of condition¹ which shall be signed and sworn to by its president, treasurer and at least a majority of its directors stating: —

1. The name of the corporation.
2. The location (with street address) of its principal office in this commonwealth, and elsewhere in the case of a corporation organized to do business wholly outside the commonwealth.
3. The date of its last preceding annual meeting.
4. The total amount of its authorized capital stock; the amount issued and outstanding and the amount then paid thereon; the class or classes, if any, into which it is divided; the par value and number of its shares.
5. The names and addresses of all the directors and officers of the corporation, and the date at which the term of office of each expires.
6. A statement of the assets and liabilities of the corporation as of the date of the end of its last fiscal year, to be made substantially in the following form: —

¹ See Appendix, Form 22.

ASSETS.

Real estate . . . . .	.
Machinery . . . . .	.
Merchandise :	
<i>Manufactures, merchandise, material and stock in process.</i>	
Cash and debts receivable . . . . .	.
Patent rights . . . . .	.
Trade marks . . . . .	.
Good will . . . . .	.
Profit and loss . . . . .	.
Total	_____

LIABILITIES.

Capital stock . . . . .	.
Accounts payable . . . . .	.
Funded indebtedness . . . . .	.
Floating indebtedness . . . . .	.
Surplus . . . . .	.
Profit and loss . . . . .	.
Total	_____

Rev. Laws, c. 110, § 51.

SECTION 46. Filing of annual report. — Such report shall be submitted to the commissioner of corporations, who shall examine it and if he finds that it conforms to the requirements of this act, he shall indorse his approval thereon; and upon the payment of the fee hereinafter provided, it may be filed in the office of the secretary of the commonwealth, who shall receive and preserve it in book form convenient for reference and open to public inspection. *Rev. Laws, c. 110, § 57.*

SECTION 47. Verification by auditor. — Such report of a corporation which has a capital stock of one hundred thousand dollars or more shall be accompanied by a written statement¹ under oath by an auditor to be employed for each ensuing fiscal year by a committee of three stockholders who are not directors which shall be selected

¹ See Appendix, Form 23.

at each annual meeting of the stockholders, or, if there are not three stockholders other than directors able and willing to serve on such committee, then to be employed by the directors, stating that such report represents the true condition of the affairs of said corporation as disclosed by its books at the time of making such audit. The statement of the auditor shall be filed by him with said report in the office of the secretary of the commonwealth, and shall be attached to and form part of it. The auditor shall be sworn to the faithful performance of his duties by a justice of the peace, or some other magistrate authorized to administer oaths or affirmations; and evidence of such appointment and qualification shall be filed in the office of the commissioner of corporations. *Rev. Laws*, c. 110, § 52.

SECTION 48. Annual tax return. — Every corporation shall annually, between the first and tenth days of May, make a return¹ to the tax commissioner, under the oath of its treasurer, stating the name of the corporation and setting forth as of the first day of May of the year in which the return is made: —

1. The total authorized amount of the capital stock of the corporation; the amount issued and outstanding and the amount then paid thereon; the classes, if any, into which it is divided; the par value and number of its shares; the market value of the shares of its stock, or of each class of its stock if there are two or more classes.

2. A statement in such detail as the tax commissioner may require of the real estate, machinery, merchandise and other assets belonging to the corporation within and without the commonwealth.

3. A complete list of the stockholders of the corporation, their residences and the amount and class of stock,

¹ See Appendix, Form 24.

if more than one, belonging to each. If stock is held as collateral security, the list shall state the name and residence of the pledgor and of the pledgee.

Such return shall be filed by the tax commissioner, and shall be open only to the inspection of the tax commissioner, his clerks and assistants, and such other officers of the commonwealth as may have occasion to inspect it for the purpose of assessing or of collecting taxes. *Rev. Laws*, c. 14, § 37.

SECTION 49. Penalty for failure to file report of condition or tax return.— If a corporation fails to file its report of condition within thirty days after the date of its annual meeting or of a final adjournment thereof, or its tax return before the tenth day of May of each year, the commissioner of corporations or the tax commissioner, as the case may be, shall give notice by mail, postage prepaid, to such corporation of its default. If it omits to file such report or return within thirty days after such notice of default has been given, it shall forfeit to the commonwealth not less than five nor more than ten dollars for each day for fifteen days after the expiration of the said thirty days, and not less than ten nor more than two hundred dollars for each day thereafter during which such default continues. If a corporation fails for two successive years to file its annual report of condition, the supreme judicial court, upon application by the commissioner of corporations, after notice and a hearing, may decree a dissolution of the corporation. *Rev. Laws*, c. 14, § 58; c. 110, §§ 53, 84.

SECTION 50. Enforcement of penalties.— Penalties or forfeitures incurred by any corporation which, being subject to the provisions of this act, omits to cause any certificate or return which may be required by the provisions of sections forty-five, forty-eight, sixty and sixty-six, to be duly

filed may be recovered in an action brought in the county of Suffolk in the name of the commonwealth, or they may be recovered by an information in equity in the name of the attorney-general at the relation of the tax commissioner or commissioner of corporations, as the case may be, brought in the supreme judicial court in the county of Suffolk. Upon such information, the court may issue an injunction restraining the further prosecution of the business of the corporation named therein until such penalties or forfeitures, with interest and costs, have been paid and until the returns and certificates required by this act have been filed. *Rev. Laws*, c. 14, §§ 55, 58, 59; c. 110, § 84.

DISSOLUTION OF CORPORATIONS.

SECTION 51. Dissolution of corporations.—A corporation which desires to close its affairs may, unless otherwise provided in the agreement of association, by the vote of a majority of all its stock, or, if two or more classes of stock have been issued, of a majority of each class outstanding and entitled to vote, authorize a petition¹ for its dissolution to be filed in the supreme judicial court or in the superior court setting forth in substance the grounds of the application; and the court, after notice to parties interested and a hearing, may decree a dissolution of the corporation. A corporation so dissolved shall be held to be extinct in all respects as if its corporate existence had expired by the limitation of its charter. *Rev. Laws*, c. 109, § 52.

Methods of dissolution.—At common law, the only methods of dissolving a corporation were by the death of all its members, by act of the legislature, by a surrender of the charter, which is accepted by the government, or

¹ See Appendix, Form 25.

by forfeiture of the franchise, which could take effect only upon a judgment of a competent tribunal on a proceeding in behalf of the State. *Heard v. Talbot*, 7 Gray, 113, 119; *In re New South Meeting-House in Boston*, 13 Allen, 497, 504; *Folger v. Columbian Ins. Co.*, 99 Mass. 267, 274. A corporation is not dissolved by its failure to elect officers. *Knowlton v. Ackley*, 8 Cush. 93; *Revere v. Boston Copper Co.*, 15 Pick. 351; *Boston Glass Manufactory v. Langdon*, 24 Pick. 49. And it seems that, since St. 1898, c. 502 (Rev. Laws, c. 109, § 56), the members of a corporation which is subject to the provisions of this act cannot, by a surrender of its certificate of incorporation, procure its dissolution.

Authority to wind up affairs.—There is no doubt of the right of a corporation, established solely for trading and manufacturing purposes, by a vote of a majority of its stockholders to wind up its affairs and to close its business, if, in the exercise of a sound discretion, it deems it expedient so to do. *Treadwell v. Salisbury Mfg. Co.*, 7 Gray, 393, 404.

Grounds for dissolution.—It is no ground for the dissolution of a corporation that one stockholder who owned a majority of the stock was carrying on a losing business, and refused to make any change in the business of the corporation or to purchase the shares of the other stockholders, *Pratt v. Jewett*, 9 Gray, 34; or that a telegraph company leased its line to another company for a less rent than it might have obtained, thereby fraudulently intending to give the benefit of the lease to the other company, in which the majority in interest of its stockholders was also interested, if, after the filing of the petition for dissolution, the lease is cancelled by vote of the directors of both companies. *In the matter of the Franklin Telegraph Co.*, 119 Mass. 447.

Dissolution in foreign jurisdiction.—If, in the absence of express statutory authority therefor, a court of another State decrees the dissolution of a corporation for a violation of its charter in paying a dividend out of its capital

stock, its decree is in excess of its jurisdiction, and is therefore entitled to no faith or credit in this commonwealth. *Folger v. Columbian Ins. Co.*, 99 Mass. 267.

SECTION 52. Continuation for three years to close affairs. — Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established. *Rev. Laws*, c. 109, § 53.

Effect of statute. — This section, as applied to existing corporations, is constitutional. *Foster v. Essex Bank*, 16 Mass. 245. See *Simmons v. Hanover*, 23 Pick. 188, 194; *Crease v. Babcock*, 23 Pick. 334, 346.

A judgment which is recovered against a corporation more than three years after the repeal of its charter, no receiver therefor having been appointed, is void. *Thornton v. Marginal Freight Railway Co.*, 123 Mass. 82; *Richards v. Attleborough Nat. Bank*, 148 Mass. 187, 191.

Under this and the following section, common and preferred stockholders should stand on the same footing in case of an ordinary liquidation or winding up of the affairs of a corporation if there is nothing in its charter or agreement of association to show otherwise; but the rule is not applicable to a case of consolidation of corporations under a special act of the legislature prescribing the terms thereof. *Hale v. Cheshire R. R. Co.*, 161 Mass. 443, 445.

SECTION 53. Receivers. — If the charter of a corporation expires or is annulled, or if the corporation is dissolved, or

if a judgment has been recovered against it, and it has neglected, for thirty days after demand made on execution, to pay the amount due, with the officer's fees, or to exhibit to the officer real or personal property belonging to it and subject to be taken on execution, sufficient to satisfy the same, and the execution has been returned unsatisfied, the supreme judicial court or the superior court shall have jurisdiction in equity upon application of a creditor or stockholder to appoint one or more receivers to take charge of its estate and effects and to collect the debts and property due and belonging to it; with power to prosecute and defend suits in its name or otherwise, to appoint agents under them and to do all other acts which might be done by such corporation, if in being, which may be necessary for the final settlement of its unfinished business. The powers of such receivers may be continued as long as the court finds necessary for said purposes. *Rev. Laws*, c. 109, § 54.

SECTION 54. Payment of debts and distribution of surplus. — The receivers shall pay all debts due from the corporation if the funds in their hands are sufficient therefor; and if they are not, they shall distribute them ratably among the creditors who prove their debts in the manner directed by any decree of the court for that purpose. If there is a balance remaining after the payment of the debts, the receivers shall distribute and pay it to those who are justly, entitled thereto as having been stockholders of the corporation, or their legal representatives. *Rev. Laws*, c. 110, § 55.

SECTION 55. — Returns to secretary of dissolution. — If a corporation is dissolved or annulled the clerk of the court in which the decree therefor has been entered shall forthwith make return thereof to the secretary of the commonwealth, giving the name of the corporation dissolved or

annulled and the date upon which such decree was entered.
Rev. Laws, c. 110, § 57.

FOREIGN CORPORATIONS.

SECTION 56. Foreign corporations defined. — The term “foreign corporation” as used in this act shall mean every corporation, association or organization which has been established, organized or chartered under laws other than those of the commonwealth for purposes for which domestic corporations may be organized under the provisions of section seven.

Foreign corporations. — A “partnership association” which is formed under the laws of Pennsylvania contained in Brightly’s Purdon’s Digest (12th ed.), 1086–1088, was held, in 1897, not to be a corporation, and to be incapable of being sued in Massachusetts as such. *Edwards v. Warren Linoline, etc. Works*, 168 Mass. 564. Whether such an association would be held to be a corporation within the meaning of this section, *quære*.

SECTION 57. Limitation of business. — No such foreign corporation shall engage or continue in any kind of business in this commonwealth the transaction of which by domestic corporations is not permitted by the laws of this commonwealth. *Rev. Laws*, c. 126, § 2.

Kind of business. — “The words ‘kind of business,’ as used in this statute, must be taken to signify the same general kind of business, and not that the statutes of the foreign jurisdiction creating it and defining its powers, duties and liabilities are the same, in all respects, as the statutes of this commonwealth relating to the same subject. Under the latter construction, very few foreign corporations could be permitted to do business in the commonwealth. It is not the duty, therefore, of the commissioner to inquire how far the powers, duties and liabilities of the foreign corporation are in all respects similar to those of

domestic corporations of the same character, but only whether the kind of business for which it is organized is one the carrying on of which is permitted to domestic corporations under the laws of the commonwealth." *Op. Atty. Gen.*, March 30, 1899.

Ibid. — A foreign corporation which is organized "for the purpose of carrying on business as a wholesale and retail dealer in wines, malt and spirituous liquors, cigars and tobacco, and the business of a licensed victualler," or "for the purpose of manufacturing and selling intoxicating liquors," is entitled to file with the commissioner of corporations the power of attorney and other papers required by Section 58. 1 *Op. Atty. Gen.* 339; *Op. Atty. Gen.*, June 16, 1899. And it may lawfully sell intoxicating liquors in this commonwealth, if licensed so to do. *Enterprise Brewing Co. v. Grime*, 178 Mass. 252; *Op. Atty. Gen.*, June 16, 1899. But it is not entitled to file the papers required by Section 58 if it is engaged in the business of loaning money to its members, under a contract with each member that, upon the payment of a weekly premium, the company will loan to him, upon the maturity of his contract, a sum of money for the purchase of a home, for the reason that, such maturity being regulated by the numerical order of acceptance of the several contracts, the transaction is forbidden by the provisions of Rev. Laws, c. 73, §§ 7, 8. *Op. Atty. Gen.*, Dec. 29, 1902.

SECTION 58. Appointment of attorney. — Every such foreign corporation which has a usual place of business in this commonwealth, or which is engaged in this commonwealth, permanently or temporarily, and with or without a usual place of business therein, in the construction, erection, alteration or repair of a building, bridge, railroad, railway or structure of any kind, shall, before doing business in this commonwealth, in writing appoint the commissioner of corporations and his successor in office to be its true and lawful attorney upon whom all lawful processes in any

action or proceeding against it may be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on it, and that the authority shall continue in force so long as any liability remains outstanding against it in this commonwealth. The power of attorney and a copy of the vote authorizing its execution, duly certified and authenticated, shall, upon payment of the fee hereinafter provided, be filed in the office of the commissioner, and copies certified by him shall be sufficient evidence thereof. Service of such process shall be made by leaving a copy of the process and a fee of two dollars in the hands or in the office of the commissioner, and such service shall be sufficient service upon the corporation. *Rev. Laws, c. 126, § 4.*

Appointment of attorney for service of process. — “Corporations are not entitled, under Art. IV. § 2, of the Constitution of the United States ‘to all the privileges and immunities of citizens in the several States.’ Any State may . . . prescribe the terms and conditions on which foreign corporations may act therein; and this power undoubtedly allows the State to prescribe the mode of service of process of its courts upon a foreign corporation doing business there.” *Lafayette Ins. Co. v. French*, 18 How. 404; *Paul v. Virginia*, 8 Wall. 168; *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 566; s. c. 100 Mass. 581; *Doyle v. Continental Ins. Co.*, 94 U. S. 535; *Ex parte Schollenberger*, 96 U. S. 369; *Railroad Co. v. Koontz*, 104 U. S. 5, 11; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196; *Philadelphia Fire Association v. New York*, 119 U. S. 110; *Hooper v. California*, 155 U. S. 648, 652; *Attorney General v. Bay State Mining Co.*, 99 Mass. 148; *National Bank of Commerce v. Huntington*, 129 Mass. 444, 449; *Johnston v. Trade Ins. Co.*, 132 Mass. 432; *Wilson v. Martin-Wilson Automatic Fire Alarm Co.*, 149 Mass. 24; *Reyer v. Odd Fellows Fra-*

ternal Accident Association, 157 Mass. 367, 373; *Aldrich v. Blatchford*, 175 Mass. 369, 371.

"Such statutes have often been declared to be neither unreasonable in themselves, nor in conflict with any principle of public law, and their purpose of compelling corporations which do business in a certain jurisdiction to submit to the domestic forum the questions arising therefrom is held to be 'highly proper.'" *Reyer v. Odd Fellows Fraternal Accident Association*, *ubi supra*.

Ibid. — Under a similar statute relative to foreign insurance corporations (Rev. Laws, c. 118, § 78, cl. 3, and c. 126, § 4), it was said that, after such corporation has appeared in court in obedience to lawful process, it is, if it does business in this commonwealth and has complied with the provisions of the statute, within the jurisdiction of our courts, and can be held to answer in suits upon contracts which are transitory in their nature, and which ordinarily may be enforced wherever the defendant may be found. The statute simply provides for service of process, which shall, by the consent of the company, have the same force and validity as if made on the company itself; and, when the service is actually made, the jurisdiction of the court is complete as to the defendant. It relates merely to the service of process, it contains no restrictions on the corporation after it comes into court, and does not preclude it from removing the action to the United States courts. But the corporation may still plead a want of jurisdiction on the ground that the subject-matter of the suit, or the remedy sought, is beyond the reach of the court, or not within the sovereign power of the State from which the court has its authority. Therefore, the courts of this commonwealth refused to entertain jurisdiction of a bill in equity brought by a citizen of Alabama against a New York insurance company, seeking to restore him to his rights under a policy issued in New York upon his life, he having failed to pay the required premiums, although the defendant was doing business in this commonwealth and had complied with the provisions of the statute as to service. *Smith v.*

Mut. Life Ins. Co., 14 Allen, 386. But a non-resident was permitted to maintain an action of contract in this commonwealth against a foreign insurance company doing business here, upon a contract made, and the subject-matter of which was situated in, another State, although the only service of process was made upon the insurance commissioner in accordance with the statute. *Johnston v. Trade Ins. Co.*, 132 Mass. 432.

Ibid. — A foreign corporation may file a voluntary petition in insolvency before appointing the commissioner of corporations its attorney, as required by this section, or before filing the papers required by Section 60. *Kelley v. Rice-Blake Lumber Co.*, 167 Mass. 28.

Ibid. — The appointment of the commissioner of corporations as attorney of a foreign corporation does not bring such corporation under the operation of the State insolvent law so that its claim against a Massachusetts debtor is barred by his discharge in insolvency. *Bergner & Engel Brewing Co. v. Dreyfus*, 172 Mass. 154.

Lawful process. — The phrase “‘lawful processes in any action or proceeding’ manifestly refers to process emanating from court, or by the authority of a court, and cannot be understood to refer to such acts or notices *in pais* between private parties as derive no authority from a court, but simply serve to create a right of action.” Therefore, the provisions of this section do not authorize the service upon the commissioner of corporations of a notice by an employee of a foreign corporation under the employers’ liability law (Rev. Laws, c. 106, § 75) of the time, place, and cause of an injury sustained by him. *Healey v. Geo. F. Blake Mfg. Co.*, 180 Mass. 270.

Cross actions. — Foreign corporations are within the purview of Pub. Sta. c. 164, §§ 2, 4 (Rev. Laws, c. 170, §§ 2, 3), which provide that the plaintiff in an action who is not an inhabitant of the commonwealth, and who cannot be found here to be served with process, shall be held to answer to any action brought against him by the defendant in the former action, if the demands are of such a nature that the

judgment or execution in the one case may be set off against the judgment or execution in the other, and that the writ in such cross action may be served on the person who appears as the attorney of the plaintiff in the original action, and such provisions as applied to foreign corporations are constitutional. *Aldrich v. Blatchford*, 175 U. S. 369.

SECTION 59. Notice of process.—When legal process against any such corporation has been served upon the commissioner, he shall immediately give notice to the corporation of such service by mail, postage prepaid, directed, in the case of a corporation established in a foreign country, to the resident manager, if any, in the United States; and shall, within two days after such service, in the same manner forward a copy of the process served upon him to such corporation or manager, or to any other person designated by the corporation by written notice filed in the office of the commissioner. The fee of two dollars paid by the plaintiff to the commissioner at the time of the service shall be taxed in his costs, if he prevails in the suit. The commissioner shall keep a record of the day and hour of the service of all such processes. *Rev. Laws*, c. 126, § 5.

SECTION 60. Copy of charter, by-laws and certificate to be filed.—Every foreign corporation, of the classes described in section fifty-eight, before transacting business in this commonwealth, shall, upon payment of the fee hereinafter provided, file with the commissioner of corporations a copy of its charter, articles or certificate of incorporation, certified under the seal of the state or country in which such corporation is incorporated by the secretary of state thereof or by the officer having charge of the original record therein, a true copy of its by-laws, and a certificate in such form as the commissioner of corporations may require, set-

ting forth (a) the name of the corporation; (b) the location of its principal office; (c) the names and the addresses of its president, treasurer, clerk or secretary and of the members of its board of directors; (d) the date of its annual meeting for the election of officers; (e) the amount of its capital stock, authorized and issued, the number and par value of its shares, the amount paid in thereon to its treasurer, and, if any part of such payment has been made otherwise than in money, of the details of such payment, so far as practicable, in accordance with the provisions of section eleven. Said certificate shall be subscribed and sworn to by its president, treasurer and by a majority of its directors or officers having the powers usually exercised by directors. The officers and directors of such corporation shall be subject to the same penalties and liabilities for false and fraudulent statements and returns as officers and directors of a domestic corporation subject to this act. Every officer of such a corporation which fails to comply with the requirements of this section and of sections fifty-eight and sixty-six, and every agent thereof who transacts business as such in this commonwealth shall, for such failure, be liable to a fine of not more than five hundred dollars. Such failure shall not affect the validity of any contract with such corporation, but no action shall be maintained or recovery had in any of the courts of this commonwealth by any such foreign corporation so long as it fails to comply with the requirements of said sections. *Rev. Laws, c. 126, § 6.*

Validity of contract. — Under a similar statute, which provided that no premium or assessment made on any contract of insurance with a citizen of the State shall be recovered by a foreign insurance company which has not complied with the requirements relating to the appointment of agents, it was held that, the contract being valid,

a premium which had actually been paid for a valid policy could not be recovered back from the agent. *Leonard v. Washburn*, 100 Mass. 251, 254.

Denial of right to sue.— Under the provisions of St. 1884, c. 830, § 8, Rev. Laws, c. 126, § 6, that the failure to file a copy of the charter and certificate “shall not affect the validity of any contract by or with such corporation,” it was held that the provisions of the statute were merely directory, and would not invalidate the contracts of the corporation, or deprive it of the right to sue in Massachusetts. *Rogers & Co. v. Simmons*, 155 Mass. 259. But, by the provisions of the present act, such failure deprives the corporation of the right to sue here until it complies with the statutes. After compliance therewith, it may bring suit upon contracts made prior thereto. *National Mut. Fire Ins. Co. v. Pursell*, 10 Allen, 231.

Liability of officers for statements in certificate.— The certificate required by this section is made and filed for the definite purpose, not of influencing the public, but for the purpose of complying with a condition precedent to obtaining the right to do business in Massachusetts, and it will not sustain an action for deceit against the officers who sign it in inducing the plaintiff to take notes of the corporation by reason of false and fraudulent representations alleged to be made therein, because it was not addressed to or intended for the public, and it could not have been intended or designed by the defendants that the plaintiff should ascertain its contents, and be induced thereby to take the notes of the corporation. *Hunnewell v. Duxbury*, 154 Mass. 286; s. c. 157 Mass. 1.

SECTION 61. Investigation as to kind of business to be done.

— The commissioner of corporations shall refuse to accept or file the charter, certificate or other papers of, or accept appointment as attorney for service for, any such corporation which does a business in this commonwealth the transaction of which by domestic corporations is not then

permitted by the laws of this commonwealth. *Rev. Laws*, c. 126, § 7.

As to the kinds of business which it is unlawful for corporations to transact in this commonwealth, see Notes to Section 57.

SECTION 62. Foreign corporations may be sued and their property attached. — Foreign corporations which have property in this commonwealth shall be liable to be sued and to have their property attached in the same manner and to the same extent as natural persons who are residents of other states and who have property in this commonwealth. The service of the writ shall be made in the manner provided in chapters one hundred and sixty-seven and one hundred and seventy of the Revised Laws, with such further service as the court to which the writ is returnable may order. *Rev. Laws*, c. 126, § 9.

Actions against foreign corporations. — The stockholders of a foreign corporation which is doing business in this commonwealth may maintain a bill in equity against it and against its officers to restrain the officers from carrying on here a business not authorized by the company's charter, and to compel them to account for property of the corporation which they have misappropriated. The appointment of a receiver, however, is not necessary or proper as ancillary to an injunction against doing business *ultra vires*, or to an order for an account of property which the officers have misappropriated. *Richardson v. Clinton Wall Trunk Co.*, 181 Mass. 580; *Wineburgh v. United States Steam, etc. Advertising Co.*, 178 Mass. 60. But the holders of preferred stock of a foreign corporation having a usual place of business in this commonwealth cannot maintain a bill in equity in Massachusetts to enjoin the corporation from issuing bonds, except under a stipulation that they should be subordinated to the rights and priority of the holders of the

preferred stock. *Kimball v. St. Louis & San Francisco Railway Co.*, 157 Mass. 7.

Ibid. — *Dissolution.* — Courts of equity have no jurisdiction to dissolve a foreign corporation or to liquidate its indebtedness. *Richardson v. Clinton Wall Trunk Co.*, 181 Mass. 580.

Ibid. — *Enforcing declaration of preferred dividend.* — A bill in equity cannot be maintained in this commonwealth, although jurisdiction is acquired by attachment of funds in the hands of a trustee within the commonwealth, if the object of the bill is to compel a foreign corporation to declare a preferred dividend due to parties here, the payment of which is guaranteed by the corporation. *Williston v. Michigan Southern & Northern Indiana R. R. Co.*, 13 Allen, 400.

Ibid. — *Determination of validity of election of officers.* — The courts of this commonwealth will not take jurisdiction of a proceeding for the determination of the validity of the election of officers of a foreign corporation which has a usual place of business in this commonwealth and is authorized to do business here. That is a question relating solely to the management of the internal affairs of the corporation, and should be settled by the courts of the State in which it is domiciled. *Wason v. Buzzell*, 181 Mass. 338.

Ibid. — *Entry of judgment.* — A judgment against a foreign corporation cannot be rendered unless notice has been given as required by Rev. Laws, c. 170, relating to proceedings against absent defendants. *Thayer v. Tyler*, 10 Gray, 164. See *Young v. Providence, etc. Steamship Co.*, 150 Mass. 550.

Right of removal to federal courts. — The service upon the commissioner of corporations of process against a foreign corporation does not preclude the corporation, after it comes into court, from removing the action to the United States courts. *Morton v. Mut. Life Ins. Co.*, 105 Mass. 141, 147; *Johnston v. Trade Ins. Co.*, 132 Mass. 432.

Attachment of property. — The word "property" in this section includes effects and credits, so that the property of

a foreign corporation may be attached in Massachusetts in an action commenced by the trustee process; and a judgment in such action will protect the trustee in an action brought against him by the foreign corporation for the recovery of its debt. *Ocean Ins. Co. v. Portsmouth Marine Railway Co.*, 3 Met. 420; *Rothschild v. Knight*, 176 Mass. 48, 53; *Folger v. Columbian Ins. Co.*, 99 Mass. 267, 272; *Nat. Bank of Commerce v. Huntington*, 129 Mass. 444, 450.

Foreign corporation chargeable as trustee. — By Rev. Laws, c. 189, § 1, a foreign corporation shall not be summoned as trustee unless it has a usual place of business in the commonwealth. Prior to St. 1870, c. 194, it could not be summoned as a trustee. *Ray v. Underwood*, 3 Pick. 302; *Danforth v. Penny*, 8 Met. 564; *Gold v. Housatonic R. R. Co.*, 1 Gray, 424; *Larkin v. Wilson*, 106 Mass. 120; *Smith v. Mut. Life Ins. Co.*, 14 Allen, 336, 342. As to what is a usual place of business within the meaning of Rev. Laws, c. 189, § 1, see *National Bank of Commerce v. Huntington*, 129 Mass. 444.

Equitable attachment. — Foreign corporations are liable, under Rev. Laws, c. 159, § 3, cl. 7, as amended by St. 1902, c. 544, § 23, to suits by a creditor to reach and apply in payment of a debt any of their property, right, title or interest, legal or equitable, which cannot be reached to be attached or taken on execution in an action at law. *Sil-loway v. Columbia Ins. Co.*, 8 Gray, 199.

Equitable attachment of letters patent. — Letters patent belonging to a corporation which has been organized under the laws of another State, which has a usual place of business in this commonwealth and which has been duly served with process, may be reached under the provisions of Rev. Laws, c. 159, § 3, cl. 7, as amended by St. 1902, c. 544, § 23, by a creditor who is an inhabitant of this commonwealth and whose debt is the result of a contract made, and to be performed, in Massachusetts. *Wilson v. Martin-Wilson Automatic Fire Alarm Co.*, 149 Mass. 24.

Actions by foreign corporations. — A foreign corporation may, at common law, bring a personal action in this com-

monwealth, *Portsmouth Livery Co. v. Watson*, 10 Mass. 91; *British American Land Co. v. Ames*, 6 Met. 391; *Blackstone Mfg. Co. v. Blackstone*, 13 Gray, 488; *American Mut. Life Ins. Co. v. Owen*, 15 Gray, 491; *Danforth v. Penny*, 3 Met. 564, 565; and there is no decision or intimation of our courts that a real action cannot be maintained by such corporation. *American Mut. Life Ins. Co. v. Owen*, 15 Gray, 491, 493. It may also maintain an action in this commonwealth against a stockholder resident here to collect assessments on stock which is not fully paid up. The objection that the remedy is by a sale of the stock, as has been held in regard to domestic corporations, will not apply if it appears that the defendant has impliedly, if not expressly, agreed to pay to the corporation any assessments which may be made. *Anglo-American Land, etc. Co. v. Dyer*, 181 Mass. 593.

Ibid. — “A corporation, being a mere creature of local statutes, can, of right, have no existence nor recognition beyond the limits of the State wherein it is established. By comity such artificial persons are permitted to contract and to sue in other States. If they avail themselves of that comity, to sue or to make contracts in another State, they may become liable to its jurisdiction to the extent to which they have thus voluntarily subjected themselves. If they have property or rights within the limits of another State, suits can be maintained and judgments enforced against them, to the extent of such property and rights; but this results from the authority of the State over whatever is within its limits, and not from any jurisdiction over the corporation itself. The judgment is operative only to the extent of such property and rights. As to these it is analogous in its effects to a proceeding *in rem*.” WELLS, J., in *Smith v. Mut. Life Ins. Co.*, 14 Allen, 336, 339. See *Folger v. Columbian Ins. Co.*, 99 Mass. 267, 272. Courts of equity in this commonwealth are not open to a foreign corporation as matter of strict right, but as matter of comity; and if, on a bill in equity brought here by a foreign corporation against a citizen of another State, it appears that complete justice

cannot be done here, or that the amount involved is small, and that the defendant will be subjected to great and unnecessary expense and inconvenience, and that the investigation if conducted here, with great difficulties which will be avoided without hardship to the plaintiff if suit is brought against the defendant in the State where he lives and where the debt was contracted, and where personal service can be made on him, the courts of this commonwealth will decline to take jurisdiction. *National Telephone Mfg. Co. v. Du Bois*, 165 Mass. 117; *Kansas & Eastern R. R. Construction Co. v. Topeka, Salina, & Western R. R. Co.*, 135 Mass. 84.

SECTION 63. Foreign corporations may hold real estate. — Foreign corporations organized for any purpose for which domestic corporations may be organized under the provisions of section seven, which have complied with the provisions of sections fifty-eight and sixty, may purchase and hold such real estate in this commonwealth as may be necessary for conducting their business. *Rev. Laws*, c. 126, § 10.

SECTION 64. Issue of stock, on domestic franchises regulated. — If a foreign corporation which owns or controls a majority of the capital stock of a domestic street railway, gas light or electric light corporation issues stock, bonds or other evidences of indebtedness based upon or secured by the property, franchise or stock of such domestic corporation, unless such issue is authorized by the laws of this commonwealth, the supreme judicial court shall have jurisdiction in equity in its discretion to dissolve such domestic corporation. If it appears to the attorney-general that such issue has been made, he shall institute proceedings for the dissolution of such corporation and for the proper disposition of its assets. The provisions of this section shall not affect the right of foreign corporations, their officers or agents to issue stock and bonds in fulfilment of

contracts existing on the fourteenth day of July in the year eighteen hundred and ninety-four. *Rev. Laws*, c. 126, § 11.

SECTION 65. Certificate of increase or decrease of capital. — All foreign corporations of the classes described in section fifty-eight, and such foreign corporations as are engaged in the business of selling or negotiating bonds, mortgages, notes or other choses in action, shall, within thirty days after the payment in of an increase of capital stock, upon payment of the fee hereinafter provided, file in the office of the secretary of the commonwealth a certificate of the amount of such increase and the fact of such payment, signed and sworn to by its president, treasurer and a majority of its directors or officers having the powers usually exercised by directors. Within thirty days after the vote of such corporation authorizing a reduction of its capital stock, a copy of such vote, signed and sworn to by the clerk of the corporation, shall, upon payment of the fee hereinafter provided, be filed in the office of the secretary of the commonwealth. *Rev. Laws*, c. 126, § 12.

SECTION 66. Annual certificate of condition. — Every foreign corporation of the classes described in section fifty-eight shall annually, within thirty days after the date fixed for its annual meeting last preceding the date of such certificate, or within thirty days after the final adjournment of said meeting, but not more than three months after the date so fixed for said meeting, prepare and file in the office of the secretary of the commonwealth, upon payment of the fee hereinafter provided, a certificate signed and sworn to by its president, treasurer and by a majority of its board of directors showing the amount of its authorized capital stock, and its assets and liabilities as of a date not more than sixty days prior to said annual meeting, in such form as is required of domestic corporations under the provisions

of section forty-five, and the change or changes, if any, in the other particulars included in the certificate required by section sixty made since the filing of said certificate or of the last annual report. *Rev. Laws*, c. 126, § 13.

Liability for false statements. — The officers of a foreign corporation, who, knowing that its assets, consisting of copyrights and privileges, were worth less than \$10,000, certified that they were worth more than \$120,000, were held liable for the debts of the corporation under the provisions of St. 1896, c. 391 (*Rev. Laws*, c. 126, § 17), on the ground that they had signed a certificate which was required by law knowing it to be false, although they did not intend to represent that the cash or market value of the property was the amount stated in the certificate, but meant to represent that it was a valuation at which it was carried in the books. *Heard v. Pictorial Press*, 182 Mass. 530.

Knowledge of falsity. — In order to hold an officer of a corporation personally liable for signing a false statement or report knowing it to be false, it must be shown that such statement or report was wilfully false, that is, made intentionally with a purpose to deceive. "The *scienter* or guilty knowledge intended by the statute must be equivalent to *mala fides* in making the certificate." *Stebbins v. Edmands*, 12 Gray, 203; *Felker v. Standard Yarn Co.*, 150 Mass. 264; *International Paper Co. v. Gazette Co.*, 182 Mass. 578.

SECTION 67. Approval of certificate. — A certificate which is required to be filed by the preceding section shall be accompanied by a written statement under oath by an auditor, as provided in section forty-seven, except that such auditor shall in all cases be chosen by the board of directors. Before it is filed, it shall be submitted to the commissioner of corporations together with the evidences of the payment of any taxes which may have been assessed

upon the corporation by any city or town in the commonwealth for the year last preceding. The commissioner of corporations shall examine said certificate and said evidences and shall, as tax commissioner, assess upon the corporation an excise tax, if any is due, in accordance with the provisions of section seventy-five. If he finds that the certificate is in compliance with the requirements of the preceding section, he shall indorse his approval thereon; but no certificate shall be filed until he has indorsed his approval thereon and until the excise tax required by section seventy-five if any is due has been paid to the treasurer and receiver general. *Rev. Laws, c. 126, § 14.*

SECTION 68. Penalty for not filing certificate. — A foreign corporation of the classes described in section fifty-eight, which omits to file the certificate required by section sixty-six, shall forfeit to the commonwealth not less than five nor more than ten dollars for each day for fifteen days after the expiration of the period therein named, and not less than ten nor more than two hundred dollars for each day thereafter, during which such omission continues, which shall be recovered as provided in section fifty. *Rev. Laws, c. 126, § 15.*

SECTION 69. Notice to delinquent corporation. — The commissioner of corporations, upon the failure of any such corporation to file the certificate required by section sixty-six, shall forthwith notify such corporation, and the notice shall contain a copy of this and the four preceding sections and of section fifty. *Rev. Laws, c. 126, § 16.*

SECTION 70. Liability of officers and its enforcement. — The officers of foreign corporations of the classes described in section fifty-eight shall be jointly and severally liable for all the debts and contracts of the corporation contracted or entered into while they are officers thereof, if any state-

ment or report which is required by the provisions of this act is made by them which is false in any material representation and which they know to be false; but only the officers who sign such statement or report shall be so liable. Such liability shall be enforced upon the conditions and in the manner prescribed by sections thirty-six, thirty-seven and thirty-nine. *Rev. Laws, c. 126, §§ 17, 19.*

Liability of officers of foreign corporations. — If a corporation is formed in one State, and by the express terms of its charter it is created for the purpose of doing business in another State, and it does transact business in such other State, it must be assumed that the charter contract was made with reference to the laws of the latter State; and the liabilities which those laws impose will attend the transaction of such business. *Pinney v. Nelson*, 188 U. S. 144. It was therefore held in that case that, if a corporation was formed in Colorado for the express purpose of carrying on business in California, the stockholders were liable to creditors in accordance with the statutes of California. For the method of enforcing such liability, see Sections 86, 87, 89, and Notes thereto.

TAXATION.

SECTION 71. Local taxation. — Every corporation which is organized or created under the laws of this commonwealth and which is subject to the provisions of this act shall be subject to taxation upon all real estate and machinery owned by it and situated in this commonwealth by the city or town in which said real estate or machinery is situated, and every foreign corporation which is subject to the provisions of this act shall be subject to taxation upon all real estate, machinery and merchandise owned by it and situated in this commonwealth by the city or town in which such property is situated. The taxes authorized by the provisions of this section shall be assessed, collected and

paid in accordance with the provisions of chapters twelve and thirteen of the Revised Laws.

Estimation of value of real estate and machinery.— In estimating the value of the real estate and machinery of a corporation for the purpose of local taxation, the price for which its stock is sold in the market is not a conclusive test of the value of such real estate and machinery, although the corporation owns no other property and owes no debts. *Chicopee v. County Commissioners*, 16 Gray, 38. Naphtha lamps and fire-alarm lanterns which are owned by a foreign corporation and are used by it under a contract for lighting the streets of a city, and for cleaning, repairing, and maintaining the street lamps are not leased to the city and are not taxable as “personal property . . . leased for profit” within the meaning of those words as used in Rev. Laws, c. 12, § 28, cl. 2. *Rising Sun Street Lighting Co. v. Boston*, 181 Mass. 211.

Water power.— Water power which is used by a manufacturing corporation in connection with land may be taxed with the lot of land of which it is parcel or to which it is appurtenant, and the meaning of Pub. Sts. c. 11, § 53 (Rev. Laws, c. 12, § 59), is that in valuing the buildings the value of the “water power and of the machinery used in said buildings” shall be excluded; and not that the machinery shall not be valued and taxed, or that the water power which is parcel of or is appurtenant to the land and is used in connection therewith shall not be valued and taxed, with the land. *Lowell v. County Commissioners*, 152 Mass. 372, 382.

Land under canal.— If a manufacturing company through whose premises a canal passes owns the fee of the land under the canal, it is taxable therefor although its right to use the water therein is subject to the right of another company to have the water flow through the canal for use beyond the premises of the first-named company. *Lowell v. County Commissioners*, 152 Mass. 372. But if the company does not own the fee and is not in possession

of land under such a canal, and does not draw water from the canal, but, by an indenture with the proprietors of the canal, merely has the right to erect and maintain buildings over said canal and over a strip of land adjoining it, subject to the rights of the proprietors to widen, deepen and enlarge the canal, and for that purpose to take down and remove any of such buildings erected over it, the company is not taxable for such land. *Ibid.*

Machinery. — Movable copper rolls, mills and dies which are used for stamping designs in colors upon calico are not a part of the machinery of a corporation so as to be subject to taxation under the provisions of Rev. Laws, c. 12, § 23, cl. 2, and c. 14, § 38. *Lowell v. County Commissioners*, 152 Mass. 372.

Foreign corporations. — Resident stockholders of foreign corporations are taxable in this commonwealth for the full value of their stock, although the real estate and machinery of the corporation are taxed to it in the State where it is established. *Dwight v. Mayor & Aldermen of Boston*, 12 Allen, 316. A foreign corporation, although it has an office and does a large part of its business in this commonwealth, is not subject to taxation on money deposited by it with a national bank here, *Boston Investment Co. v. Boston*, 158 Mass. 461; nor on debts due to it. *New York Biscuit Co. v. Cambridge*, 161 Mass. 326.

A foreign corporation which has a place of business in this commonwealth, where it has personal property consisting of office furniture and fixtures, and where it keeps personal property which is pledged to it as collateral security for money lent, and which it sells when not redeemed, is taxable for such property under Rev. Laws, c. 12, § 23, cl. 1. *Boston Loan Co. v. Boston*, 137 Mass. 332.

Sewing machines are taxable as "stock in trade" under said section if, the title thereto being in a foreign corporation, it keeps them in its store for the purpose of sale or letting, or lets them for hire and delivers possession thereof to the lessee. *Singer Mfg. Co. v. County Commissioners*, 139 Mass. 266.

SECTION 72. Valuation of corporate franchise. — The tax commissioner shall annually ascertain from the returns required by the provisions of this act, or in any other manner, the market value of the shares of the capital stock of each domestic corporation which is subject to the provisions of this act, and shall estimate therefrom the fair cash value of all of the shares constituting its capital stock on the preceding first day of May, which shall, for the purposes of this act, be taken as the value of its corporate franchise. From such value there shall be deducted the value as found by the tax commissioner of its real estate and machinery within the commonwealth subject to local taxation and of securities which, if owned by a natural person resident in this commonwealth, would not be liable to taxation; also the value as found by the tax commissioner of its property situated in another state or country and subject to taxation therein. From such value there shall not be deducted securities which, if owned by a natural person resident in this commonwealth, would be liable to taxation. For the purposes of this section, the tax commissioner may take the value at which such real estate and machinery is assessed in the city or town where it is situated as its true value, but such local assessment shall not be conclusive of its value. *Rev. Laws*, c. 14, § 38.

Examination of returns. — The language of the statute does not preclude the tax commissioner from making the examination of the returns through the instrumentality of clerks employed by him. *Commonwealth v. New England Slate & Tile Co.*, 13 Allen, 391.

Valuation of corporate franchise. — In determining the value of the corporate franchise, the tax commissioner may estimate the value of the shares of the capital stock from the returns of the corporation or from the price which the stock commands upon actual sales, irrespective of the ac-

tual pecuniary condition of the corporation or of the value of its real or personal property. *Commonwealth v. Cary Improvement Co.*, 98 Mass. 19. If, by reason of privileges more or less permanently attached to some of the shares, such as a certificate or obligation for the future payment of a stock or cash dividend, they acquire an enhanced market value over the remaining shares, such enhancement is an element which must be included in ascertaining the aggregate value of all the shares. *Boston & Lowell R. R. Co. v. Commonwealth*, 100 Mass. 399. And so the market value of preferred stock is to be taken with the market value of the common stock to make the aggregate value of all the shares. Per COLT, J., in *Boston & Lowell R. R. Co. v. Commonwealth*, *ubi supra*.

Deduction of mortgages of realty. — In deducting from the value of the corporate franchise the value of the real estate and machinery of the corporation which is subject to local taxation, the tax commissioner shall also deduct the value of mortgages on real estate which are held by the corporation and which are subject to local taxation under Rev. Laws, c. 12, § 16. *Firemen's Fire Ins. Co. v. Commonwealth*, 137 Mass. 80.

Deduction of securities. — The value of securities in which the corporate property is invested cannot be deducted from the value of the corporate franchise except so far as such deductions are allowed by the provisions of the statutes. *Commonwealth v. New England Slate & Tile Co.*, 13 Allen, 391. Therefore, under St. 1864, c. 208; St. 1865, c. 283; Pub. Sts. c. 13, and Rev. Laws, c. 14, the value of United States bonds, which are exempt from taxation by any State, and in which a portion of the property of a corporation was invested, could not be deducted from the value of the corporate franchise in arriving at the basis of taxation. *Manufacturers' Ins. Co. v. Loud*, 99 Mass. 146. But under the present statute, such bonds would be deducted.

Purpose of deductions. — The obvious purpose of deducting the value of real estate and machinery from the aggregate value of the shares is to prevent double taxation, and

to insure that property of a corporation which, under other provisions of law, is subject to local taxation shall not be included in the valuation upon which the excise on the franchise is based. *Commonwealth v. Hamilton Mfg. Co.*, 12 Allen, 298; *Firemen's Fire Ins. Co. v. Commonwealth*, 137 Mass. 80; *Boston & Sandwich Glass Co. v. Boston*, 4 Met. 181.

Revision of findings of tax commissioner. — Prior to St. 1865, c. 288, § 13, establishing a board of appeal (Pub. Sts. c. 13, §§ 61, 62; Rev. Laws, c. 14, § 65), the judgment of the tax commissioner in estimating or computing the value of the capital stock of a corporation was not open to modification or revision by any other tribunal. *Commonwealth v. Cary Improvement Co.*, 98 Mass. 19. And the question of the overvaluation of stock cannot now be determined by the Supreme Judicial Court upon a petition brought under the provisions of Rev. Laws, c. 14, § 67 (Section 84, *post*). *Boston Manufacturing Co. v. Commonwealth*, 144 Mass. 598.

SECTION 73. Appeal from local valuation. — The tax commissioner may require a corporation to prosecute an appeal from the valuation of its real estate or machinery by the assessors of a city or town, either to the county commissioners or to the superior court, whose decision shall be conclusive upon the question of value. Upon such appeal the tax commissioner may be heard, and in the superior court costs may be awarded as justice requires. *Rev. Laws*, c. 14, § 39.

SECTION 74. Taxation of corporate franchise. — Every domestic corporation which is subject to the provisions of this act shall in each year pay to the treasurer and receiver general a tax upon the value of its corporate franchise, after making the deductions provided for in section seventy-two, at a rate to be determined by an apportionment of the whole amount of money to be raised by taxation upon property in the commonwealth during the same year as

returned by the assessors of the several cities and towns under the provisions of section ninety-three of chapter twelve of the Revised Laws, after deducting therefrom the amount of tax assessed upon polls for the preceding year, as certified to the secretary, upon the aggregate valuation of all cities and towns for the preceding year as returned under sections sixty and sixty-one of said chapter of the Revised Laws. But the said tax upon the value of the corporate franchise after making the deductions provided for in section seventy-two, shall not exceed a tax levied at the rate aforesaid upon an amount, less said deductions, twenty per cent in excess of the value, as found by the tax commissioner, of the real estate, machinery and merchandise, and of securities which if owned by a natural person resident in this commonwealth would not be liable to taxation; and the total amount of tax to be paid by such corporation in any year upon its property locally taxed in this commonwealth and upon the value of its corporate franchise shall amount to not less than one tenth of one per cent of the market value of its capital stock at the time of said assessment as found by the tax commissioner. If the return from any city or town is not received prior to the twentieth day of August, the amount raised by taxation in said city or town for the preceding year, as certified to the secretary of the commonwealth, may be adopted for the purpose of this determination. *Rev. Laws*, c. 14, § 40.

Tax on corporate franchises. — Constitutionality. — In the case of *Commonwealth v. Hamilton Mfg. Co.*, 12 Allen, 298, the St. 1864, c. 208, imposing a tax on corporations having a capital stock divided into shares was held to be constitutional, and the decision was affirmed by the Supreme Court of the United States in *Hamilton Co. v. Massachusetts*, 6 Wall. 632. That act, after requiring returns from the assessors of cities and towns of the value of the real estate

and machinery for which such corporations were taxed, and returns from corporations of the par value and cash market value of their shares, imposed a tax of one and one-sixth per cent upon the excess of the market value of the capital stock of each corporation over the value of its real estate and machinery. The court held that the tax imposed by that act was an excise on the franchise of corporations and not on their property; that its imposition was a lawful exercise of legislative power under the constitution, and that the mode of measuring the value of the franchise by the market value of the whole stock, allowing the element of deduction as equitable in its general effect, was just, reasonable, and valid. It was further said that the tax could not be supported as a tax on property in the sense in which that phrase is used in part 2, c. 1, § 1, art. 4, of the constitution, because it was not "proportional"; that is, it was not laid according to any rule of proportion whatever, but was imposed only on the corporations designated in the act without any reference to the amount required to be raised by taxation for public purposes, or to the actual property held by such corporations subject to taxation, or to the whole amount of property in the commonwealth liable to be assessed for the public service, and that it must be justified as an exercise by the legislature of the authority conferred by the clause of the constitution above referred to which gives the power of imposing reasonable duties and excises upon any "commodities" within the commonwealth. As showing that it was an excise tax, not only in terms, but in substance and effect, the fact was relied on that it did not require returns of the personal property which was held by corporations, but adopted as a standard the aggregate market value of all the shares of the capital stock or the cash price for which they would sell in the market irrespective of the actual value or amount of property which a corporation might own. Such price, it was said, may exceed the aggregate of the corporate property or may fall short of it, and although the amount of property held by a corporation is one of the considerations

which enters into the market value of its shares, such market value also embraces other essential elements, such as the profits which have attended the operations of the corporation, the prospect of its future success, the nature and extent of its corporate rights and privileges, and the skill and ability with which its business is managed ; or, in other words, it is the estimate put on the potentiality of a corporation which influences and often controls its market value.

In the year 1865, the legislature, by St. 1865, c. 283, § 5, provided that corporations should pay a tax upon their corporate franchise at a rate determined by an apportionment of the whole amount of money to be raised by taxation upon property in the commonwealth upon the aggregate valuation of all the cities and towns in the commonwealth. In that act, it was said by WELLS, J., in *Manufacturers' Ins. Co. v. Loud*, 99 Mass. 146, the intention of the legislature to lay the tax upon the corporate franchises appears even more obviously than in the statute of 1864. See *Commonwealth v. Lowell Gas Light Co.*, 12 Allen, 75 ; *Commonwealth v. New England Slate & Tile Co.*, 13 Allen, 391 ; *Commonwealth v. Cary Improvement Co.*, 98 Mass. 19 ; *Commonwealth v. Berkshire Life Ins. Co.*, 98 Mass. 25 ; *Manufacturers' Ins. Co. v. Loud*, 99 Mass. 146 ; *Commonwealth v. Lancaster Savings Bank*, 123 Mass. 493.

Tax on commodities. — “Commodity” is a general term, and includes the privilege and convenience of transacting a particular business ; and it has never been questioned that the legislature may levy an excise upon persons carrying on such business, or provide that a license must be obtained in order to transact it. And if a number of persons are incorporated by the legislature for a special purpose, or, being incorporated by another State, have an office or place of business within the commonwealth, an excise may be laid upon the franchise thus conferred or exercised. ENDICOTT, J., in *Commonwealth v. Lancaster Savings Bank*, 123 Mass. 493.

Nature of franchise which is taxable. — “The franchise which subjects the corporation to taxation is the right to

do business legally by complying with the laws. A corporation having this right under legislative action cannot relieve itself from liability to taxation by neglecting to do business, or ceasing to do business. Its franchise remains, and it may do business when it chooses. Nor can it escape taxation by failing to comply with a statute which is intended to regulate its conduct while doing business, or before commencing business." *KNOWLTON, J.*, in *Attorney General v. Mass. Pipe Line Gas Co.*, 179 Mass. 15, 19.

Taxation of unissued shares of stock. — Proposed new shares of stock in a railroad corporation which have been subscribed for but have not been issued cannot be included in estimating the aggregate value of the shares in the capital stock for the purpose of taxation of the corporation under Pub. Sts. c. 13, §§ 38–40 (Rev. Laws, c. 14, §§ 37, 38, 40). *Boston & Albany R. R. Co. v. Commonwealth*, 157 Mass. 70.

Taxation of cash in treasury. — A corporation which is subject to the provisions of this act is not liable to be taxed for cash in its treasury, for that is personal property which enters into the value of the shares. *Fall River v. County Commissioners*, 125 Mass. 567.

Taxation of corporations organized to build railroads in foreign countries. — Shares in corporations organized under general laws to build railroads in foreign countries were, until 1887, liable not only for an excise tax under Pub. Sts. c. 13, §§ 43, 46, but also for State, county, and town purposes. *Pratt v. Street Commissioners of Boston*, 139 Mass. 559. But by St. 1887, c. 228, they were exempted from local taxation (see Rev. Laws, c. 14, §§ 52, 61), and are now doubtless liable to taxation under the provisions of Section 74 of the Business Corporation Law.

Default in assessor's returns. — The right to levy the tax required by this section will not be defeated by the failure of the assessors to make the returns required by Rev. Laws, c. 12, § 93,¹ for the tax commissioner may, under the pro-

¹ That section is as follows: "Assessors shall annually, on or before the first Monday of August, return to the tax commissioner the names of all corporations, except banks of issue and deposit, having a

visions of Section 73, *ante*, ascertain the facts "in any other manner." *Commonwealth v. New England Slate and Tile Co.*, 13 Allen, 391.

SECTION 75. Taxation of foreign corporations. — Every foreign corporation of the classes described in section fifty-eight shall, in each year, at the time of filing its annual certificate of condition, pay to the treasurer and receiver general, for the use of the commonwealth, an excise tax to be assessed by the tax commissioner of one hundredth of one per cent of the par value of its authorized capital stock as stated in its annual certificate of condition; but it may deduct from such tax the amount of taxes upon property paid by it to any city or town in the commonwealth during the preceding year, and the amount of such excise tax shall not in any one year exceed the sum of two thousand dollars.

Taxation of foreign corporations. — An excise tax on the par value of the capital stock of a foreign corporation "having an office or place of business within the commonwealth for the direction of its affairs or transfer of shares" is legal. It is warranted by the constitution of the commonwealth and is not in conflict with any provision of the constitution of the United States. *Attorney General v. Bay State Mining Co.*, 99 Mass. 148. The legislature has the power to tax a foreign corporation to any extent it

capital stock divided into shares, chartered by the commonwealth or organized under the general laws for the purposes of business or profit and established in their respective cities and towns or owning real estate therein, and a statement in detail of the works, structures, real estate and machinery owned by each of said corporations and situated in such city or town, with the value thereof, on the first day of May preceding, and the amount at which the same is assessed in said city or town for the then current year. They shall also, at the same time, return to the tax commissioner the amount of taxes laid, or voted to be laid, within said city or town, for the then current year, for state, county and town purposes. If the assessors neglect to comply with the requirements of this section, each assessor so neglecting shall forfeit one hundred dollars."

pleases as a condition upon which such corporation may be permitted to exercise its franchise. *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 566; *Maine v. Western Union Telegraph Co.*, 73 Maine, 518.

As to local taxation of foreign corporations, see Notes to Section 71.

SECTION 76. Remedy of corporation if assessors' valuation exceeds tax commissioner's. — If the value of the real estate and machinery of a domestic corporation which is subject to local taxation within the commonwealth, as determined by the tax commissioner, is less than the value thereof as determined by the assessors of the city or town in which it is situated, he shall give notice of his determination to such corporation; and, unless within one month after the date of such notice it applies to said assessors for an abatement and, upon their refusal to grant an abatement, prosecutes an appeal under the provisions of section seventy-seven of chapter twelve of the Revised Laws, giving notice thereof to the tax commissioner, the valuation of said commissioner shall be conclusive upon said corporation. *Rev. Laws*, c. 14, § 62.

Appeal to county commissioners. — If the valuation by the tax commissioner of the real estate and machinery is less than the valuation by the local assessors, the corporation would be subjected to double taxation on a part of its property, and the purpose of this section is to prevent such injustice by providing an appeal to the county commissioners. When the appeal is before them, the tax commissioner on behalf of the commonwealth, and the city or town in which the real estate or machinery is situated, are the real parties in interest, and the main object of the hearing is to determine what valuation shall be binding upon each of them in assessing and collecting the excise or tax to which each is entitled. Therefore the appeal will not be defeated although the corporation has previously failed, without excuse, to file

a sworn list of its property under Rev. Laws, c. 12, § 74. *Lowell v. County Commissioners*, 146 Mass. 403; *Commonwealth v. Hamilton Mfg. Co.*, 12 Allen, 298; *Firemen's Fire Ins. Co. v. Commonwealth*, 137 Mass. 80. An appeal from a decision of the assessors refusing to abate a tax is seasonably taken if it is filed within thirty days after the date of the notice of such refusal. *Lowell v. County Commissioners*, *ubi supra*.

SECTION 77. *Notice of tax.* — The tax commissioner shall, annually, as soon as may be after the first Monday of August, give notice to the treasurer of every domestic corporation which is liable to a tax under the provisions of section seventy-four of the amount thereof, that it will be due and payable to the treasurer and receiver general within thirty days after the date of such notice, but not before the first day of November; and that, within ten days after the date of such notice, the corporation may apply for a correction of said tax and be heard thereon by the board of appeal authorized by the provisions of section sixty-five of chapter fourteen of the Revised Laws. *Rev. Laws*, c. 14, § 54.

SECTION 78. *Collection of tax.* — Taxes which are assessed under the provisions of this act may be recovered by the treasurer and receiver general in an action of contract brought in the name of the commonwealth, or they may be collected by an information brought in the supreme judicial court by the attorney-general at the relation of the treasurer and receiver general. The court may issue an injunction upon such information restraining the further prosecution of the business of such corporation until such taxes with interest and costs thereon have been paid. *Rev. Laws*, c. 14, § 58.

Action for taxes. — An action under this section for the recovery of taxes must be brought in the name of the

commonwealth. If brought in the name of the treasurer and receiver general, judgment will be rendered for the defendant. *Oliver v. Colonial Gold Company*, 11 Allen, 288.

SECTION 79. Interest on unpaid taxes. — Corporations which neglect to pay the taxes assessed under the provisions of this act shall pay interest at the rate of six per cent per annum from the time when such taxes were payable until such payment is made, if such payment is made before the commencement of proceedings for the recovery thereof, and twelve per cent if made after the commencement thereof. *Rev. Laws*, c. 14, § 56.

SECTION 80. Liability of lessee for tax. — The lessee of the real estate or machinery of any corporation which is liable to taxation under the provisions of this act shall also be liable for the payment of the tax, and upon such payment may, in the absence of an agreement to the contrary, retain it out of the rent of the property or recover it in an action against the lessor. *Rev. Laws*, c. 14, § 60.

SECTION 81. Submission of books to inspection. — Every domestic corporation which is subject to taxation under the provisions of this act shall, when required, submit its books to the inspection of the tax commissioner and its treasurer and directors to examination on oath relative to all matters affecting the determinations which are to be made by said commissioner. *Rev. Laws*, c. 14, § 63.

Submission and inspection of books. — The provisions of this section do not imply an investigation and valuation of corporate property unless such investigation becomes necessary by reason of the absence of other means of information by which to determine the value of the stock. If all the shares of a corporation are held in a few hands, and so controlled that no sales take place, there is no means of ascertaining their market value, and in such case an

inspection of the books, showing the amount and kind of investments, the nature and extent of the business, and the amount of profits realized, would afford the means of a reasonable approximation to the value of the shares. But such valuation is, in form and in legal intendment, "the market value of all the capital stock" as made up of the aggregate of the incorporeal shares, and not as consisting of the real and personal property of the corporation. *Commonwealth v. Cary Improvement Co.*, 98 Mass. 19.

SECTION 82. Appeals and reimbursement. — Any party who is aggrieved by a decision of the tax commissioner upon any question arising under the provisions of sections seventy-two, seventy-four and eighty-seven may, within ten days after notice of his decision, apply to the board of appeal authorized by section sixty-five of chapter fourteen of the Revised Laws. Said board shall hear and decide the subject matter of said appeal and give notice of its decision to the tax commissioner and to the appellant; and its decision shall be final and conclusive, although payments have been made as required by the decision appealed from. Any over-payment of tax determined by decision of said board of appeal shall be reimbursed from the treasury of the commonwealth. *Rev. Laws*, c. 14, § 65.

SECTION 83. Collection of tax by warrant. — If a tax or excise of any kind remains due to or is claimed by the commonwealth from any domestic corporation which is subject to the provisions of this act for ten days after notice given through the mail by the treasurer and receiver general to its treasurer or other financial agent that such tax or excise is due and unpaid, the treasurer and receiver general, in addition to other methods of relief, may issue his warrant, directed to the sheriff or his deputies of the county in which the principal office of the corporation is located, commanding the collection of such tax or excise.

Such warrant may be substantially in the form of and served in the same manner as those issued by assessors of towns. It shall not run against the body of any person, but no property of such delinquent corporation shall be exempt from seizure and sale thereon. The officer having such warrant shall collect such tax or excise and interest thereon at the rate of twelve per cent per annum from the time when such tax or excise became due, and may collect and receive for his fees the sum which an officer would be entitled by law to receive upon an execution for a like amount. He shall also collect one dollar for the warrant which shall be paid over to the treasurer and receiver general. *Rev. Laws, c. 14, § 66.*

SECTION 84. Determination of validity of tax. — A corporation which is aggrieved by the exaction of such tax or excise, or of any portion thereof may, within six months after its payment, whether such payment be before or after the issue of the warrant mentioned in the preceding section, apply by petition to the supreme judicial court setting forth the amount of the tax or excise and costs thereon which have been paid, the general legal grounds and the specific grounds in fact, if any, upon which it alleges that such tax or excise should not have been exacted. Said petition shall be the exclusive remedy and shall be entered and determined in the county of Suffolk. A copy of the petition shall be served upon the treasurer and receiver general and upon the attorney-general, and the proceedings thereon shall conform as nearly as may be to proceedings in equity, and an abatement shall be made of such portion of the tax or excise as was assessed without authority of law. *Rev. Laws, c. 14, § 67.*

Grounds of petition to determine validity of tax. — A petition under this section is not intended to bring before the court the inquiry whether there has been an over-

valuation of the shares of stock of a corporation, but only the question whether there has been a wrongful assessment of a tax or excise upon that which is not the proper subject of taxation. *Boston Manufacturing Co. v. Commonwealth*, 144 Mass. 598.

SECTION 85. *Reimbursement of tax illegally exacted.* — If the court, upon a hearing, adjudges that such tax or excise and the costs thereon have been illegally exacted, a copy of the judgment or decree shall be transmitted by the clerk of the court to the auditor of the commonwealth, who shall thereupon audit and certify the amount adjudged to have been illegally exacted, with interest, and with costs to be taxed by the clerk of the court in the same manner as other claims against the commonwealth, and the treasurer and receiver general shall pay the same without any further act or resolve making appropriation therefor. So much thereof as may have been paid from the treasury of the commonwealth to any city or town may be deducted from and set off against any sum afterward payable to such city or town. *Rev. Laws*, c. 14, § 68.

SECTION 86. *Distribution of tax.* — No taxes shall be assessed in a city or town for state, county or town purposes upon the shares in the capital stock of domestic corporations for any year for which they pay to the treasurer and receiver general a tax on the value of their corporate franchises. Such proportion of the tax collected of each of said corporations as corresponds to the proportion of its stock owned by persons residing in this commonwealth shall be distributed, credited and paid to the several cities and towns in which, from the returns or other evidence, it appears that such persons resided on the preceding first day of May, according to the number of shares so held in such cities and towns respectively. If stock is held by co-partners, guardians, executors, admin-

istrators or trustees, the proportion of tax corresponding to the amount of stock so held shall be credited and paid to the cities and towns where the stock would have been taxed under the provisions of clauses four, five, six and seven of section twenty-three and section twenty-seven of chapter twelve of the Revised Laws. *Rev. Laws*, c. 14, § 61.

SECTION 87. Determination and payment of tax. — The tax commissioner shall, subject to appeal to the board of appeal authorized by section sixty-five of chapter fourteen of the Revised Laws, ascertain and determine the amount due to each city and town under the provisions of the preceding section, notify the treasurer of each city and town thereof, and certify the amount as finally determined to the treasurer and receiver general, who shall thereupon pay over the same. *Rev. Laws*, c. 14, § 62.

ORGANIZATION AND FILING FEES.

SECTION 88. Fees for organization papers. — The fee for filing and recording the articles of organization required by section eleven, including the issuing by the secretary of the commonwealth of the certificate of incorporation, shall be one fortieth of one per cent of the total amount of the authorized capital stock as fixed by the articles of organization; but not in any case less than ten dollars. *Rev. Laws*, c. 110, § 86.

SECTION 89. Fees for increase of capital. — The fee for filing and recording the certificate required by section forty-two providing for an increase of capital stock shall be one fortieth of one per cent of the amount by which the capital is increased. *Rev. Laws*, c. 110, § 86.

SECTION 90. Fees for all other certificates, statements and reports. — The fees for filing all other certificates, statements or reports required by law shall be five dollars for each

certificate, statement or report, but no fee shall be paid for filing the annual tax return required by section forty-eight.

Fees for official copies of any of the records referred to in this act shall be at the rates now fixed by chapter two hundred and four of the Revised Laws for copies of similar records furnished by the secretary of the commonwealth. *Rev. Laws*, c. 110, § 86.

SECTION 91. Fees for foreign corporations. — Every foreign corporation which is subject to the provisions of this act shall pay to the officers hereinafter designated the following fees: for filing a copy of its charter, by-laws and the certificate required by section sixty, twenty-five dollars to the treasurer and receiver general.

For filing all other certificates and statements, including the annual certificate of condition required by section sixty-six, five dollars to the secretary of the commonwealth. *Rev. Laws*, c. 126, § 20.

MISCELLANEOUS PROVISIONS.

SECTION 92. Fishing associations. — A corporation which is organized for the purpose of opening outlets, canals, sluiceways or ditches for the introduction and propagation of herrings and alewives, before making any purchase of real estate or doing any acts in pursuance of its organization, shall obtain the authority in writing of the mayor and aldermen of the city or of the selectmen of the town within which its works are to be located, and, within thirty days after obtaining such authority, shall file a copy thereof, certified by the city or town clerk, in the office of the secretary of the commonwealth. *Rev. Laws*, c. 110, §§ 8, 56, 71.

SECTION 93. Co-operative associations. — A corporation which is organized for the purpose of co-operation in carrying on any business and of co-operative trade shall distribute its earnings or profits among its workmen, pur-

chasers and stockholders at such times and in such manner as its by-laws shall prescribe, but as often at least as once in twelve months. No distribution shall be made unless at least ten per cent of the net profits have been appropriated for a contingent or sinking fund until an amount has accumulated equal to thirty per cent of its capital stock. No person shall hold shares in any such corporation to an amount exceeding one thousand dollars at their par value, nor shall a stockholder be entitled to more than one vote upon any subject. *Rev. Laws*, c. 110, §§ 7, 69, 70.

SECTION 94. **Free beds in hospitals.** — A manufacturing corporation may, by the vote of a majority of all its stock, or if two or more classes of stock have been issued, of a majority of each class outstanding and entitled to vote, appropriate not more than five thousand dollars, or an annual sum of not more than five hundred dollars, for the support of free beds in one or more hospitals in this commonwealth for the use of its employees. *Rev. Laws*, c. 110, § 50.

REPEAL.

SECTION 95. **Repeal.** — Sections forty-nine, fifty, fifty-one, fifty-two and sixty-nine of chapter fourteen of the Revised Laws are hereby repealed. Sections thirty-seven, thirty-eight, thirty-nine, forty, forty-two, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-one, sixty-two, sixty-three, sixty-six, sixty-seven and sixty-eight of chapter fourteen, and chapters one hundred and nine, one hundred and ten and one hundred and twenty-six except section eight of the Revised Laws, and chapter four hundred and forty-one of the acts of the year nineteen hundred and two and all other acts and parts of acts inconsistent herewith, so far as they apply to corporations which are subject to the provisions of this act, are hereby repealed.

Repeal of general corporation act. — “The repeal of a general corporation law cannot be construed, in the absence of express provisions, as intended to repeal the charters formed under it, especially where the manifest purpose of the repealing act is to substitute a new law, extending the provisions of the old, and perfecting its details, but not changing its general policy.” COLT, J., in *United Hebrew Association v. Benshimol*, 130 Mass. 325, 327.

Section 8 of c. 126 of the Revised Laws, which was expressly excepted from the repealing clause of the act, regulates the names of certain foreign corporations, and is as follows:—

SECTION 8. A foreign corporation which carries on a banking, mortgage, loan and investment or trust business shall indicate in letters equally conspicuous with its name, upon all signs, advertisements, circulars, letterheads and other documents which contain its name, the state or country in which it is chartered or incorporated. No such corporation and no person who is engaged in such business shall carry it on in or under a name which, previous to such use, was in lawful use by a corporation which was established under the laws of this commonwealth and was carrying on the same or a similar business or in or under a name so similar thereto as to be liable to be mistaken for it. The supreme judicial court and the superior court shall have jurisdiction in equity to enforce the foregoing provisions of this section. Whoever violates the provisions of this section shall be punished by a fine of not more than one thousand dollars. *Sts.* 1889, c. 452, §§ 2, 3; 1890, c. 329.

Regulation of names of foreign corporations. — The classes of business which this section regulates must be construed to be a banking business, a mortgage business, or a loan and investment business. *International Trust Co. v. International Loan & Trust Co.*, 153 Mass. 271. This section imports that the business in which the two corporations are

engaged is the same, or so similar as to mislead the public, and the party to bring the petition is the party aggrieved by the action of the foreign corporation. *Ibid.*

SECTION 96. Construction of act. — The provisions of this act so far as they are the same as those of existing statutes shall be construed as a continuation thereof, and not as new enactments, and a reference in a statute which has not been repealed to provisions of law which have been revised and re-enacted herein shall be construed as applying to such provisions as so incorporated in this act. The repeal of a law by this act shall not affect any act done, ratified or confirmed, or any right accrued or established, or any action, suit or proceeding commenced under any of the laws repealed before the repeal took effect, but the proceedings in such case shall, when necessary, conform to the provisions of this act. *Rev. Laws, c. 226, §§ 2, 4.*

SECTION 97. Date of taking effect. — This act shall take effect on the first day of August in the year nineteen hundred and three.

Approved June 17, 1903.

CHAPTER II.

MISCELLANEOUS STATUTES AFFECTING BUSINESS CORPORATIONS.

THE Business Corporation Law, which is contained in the preceding chapter, was designed to form a complete code for the creation, organization, management, taxation and supervision of all such corporations as are subject to its provisions, and all statutes by which such matters were formerly regulated are, as to those corporations, superseded and repealed. There remains, however, a considerable number of other statutes of a general and miscellaneous nature relating to such corporations, their officers and agents, and it is the purpose of this chapter to notice them and the decisions affecting them.

PRACTICE AND PROCEDURE IN ACTIONS BY AND AGAINST CORPORATIONS.

SECTION 1. Venue of transitory personal actions. — Transitory actions to which both parties are corporations may be brought in any county in which either corporation has an established or usual place of business, or in which it held its last annual meeting, or usually holds its meetings. If one party is a corporation and the adverse party is a natural person, the action may be brought in any county in which by the foregoing provision the corporation might sue or be sued, or it may be brought in the county in which the natural person lives or has his usual place of

business. *Rev. Laws*, c. 167, § 7. Formerly, a plaintiff who lived outside the commonwealth might bring an action against a corporation in any county. *Rev. Sts.* c. 90, § 14; *Raymond v. Lowell*, 6 Cush. 524. But since St. 1856, c. 70, which was embodied and re-enacted in Gen. Sts. c. 123, § 1; Pub. Sts. c. 161, § 1; *Rev. Laws*, c. 167, § 1, the action, if any one of the parties thereto lives in the commonwealth, shall be brought in the county in which one of them lives or has his usual place of business.

Established place of business.—A toll house of a turnpike corporation at which tolls are collected and tickets sold by an agent of the corporation, and where its workmen are sometimes paid by the treasurer, is “an established or usual place of business” which the corporation has within the county; and actions may therefore be brought by or against it in that county, although, in another county, it has an office at which the treasurer is to be found and the books are kept, and at which the meetings of the directors and of the corporation are held. *Rhodes v. Salem Turnpike, etc. Co.*, 98 Mass. 95. An office, although not hired by the corporation, but by a firm of which the treasurer of the corporation is a member, at which all the meetings of the stockholders and directors are held, its official records, cash-book, stock ledger and certificate book are kept, the number of which is given as the address of the corporation in the printed heading on the blanks used by it, is a usual place of business. *Barre Nat. Bank v. Hingham Mfg. Co.*, 127 Mass. 563, 567. So, also, is an office in this commonwealth of a foreign railroad corporation, if it appears that its principal officers are to be found there, that such business is carried on there as is usually carried on in the office of the president and treasurer of a railroad corporation, and that it is established for the convenience of the stockholders and for the better management of its finances and

other business. *Nat. Bank of Commerce v. Huntington*, 129 Mass. 444.

SECTION 2. Venue of local actions.—A local action against a corporation must be brought in the county where the cause of action arises, *Vermont & Mass. R. R. Co. v. Orcutt*, 16 Gray, 116; and an action of replevin shall be brought in the county in which the goods are detained. *Rev. Laws*, c. 167, § 3.

SECTION 3. Form, service and return of writ.—In actions against corporations, and in other actions in which property may be attached, but in which the defendant is not liable to arrest, the writ of attachment and original summons may be combined in one, requiring the officer to attach the goods and estate and to summon the defendant. *Rev. Laws*, c. 167, § 17. The summons shall be served by leaving the original or copy, as the case may be, with the clerk, cashier, secretary, agent or any other officer who has charge of its business; and if no such officer is found within the county, the summons may be served on any member of the corporation. *Rev. Laws*, c. 167, § 36. Service of process on a foreign corporation shall be made by leaving a copy thereof and a fee of two dollars in the hands or in the office of the commissioner of corporations, who shall forthwith give notice thereof to the defendant. *St.* 1903, c. 437, §§ 58, 59. The service of a writ against a corporation upon the plaintiff in the action as an officer of the corporation is insufficient, *Buck v. Ashuelot Mfg. Co.*, 4 Allen, 357; but, if no plea in abatement is filed, the court will not, on the ground of insufficient service, dismiss an action, if it appears that the only service on the corporation was made on the assistant treasurer. *Harri-man v. Reading, etc. Street R. R. Co.*, 173 Mass. 28. An original writ which is issued by the Supreme Judicial Court or the Superior Court shall be served at least fourteen days

before the return day. If it is issued by a police, district or municipal court, it shall be served not less than seven nor more than sixty days before the return day; but if it is to be served in a county other than that in which the court issuing it is held, it shall, except in trustee process, be served at least fourteen days before the return day. *Rev. Laws*, c. 167, § 27.

Return of process. — An original writ which is issued by the Supreme Judicial Court or the Superior Court in an action by or against a corporation which is subject to the provisions of the Business Corporation Law shall be returnable, at the election of the plaintiff, at any return day which occurs after the expiration of fourteen days from, and within three months after, the date of the writ. If it is issued by a police, district or municipal court, or by a trial justice, it shall be returnable not more than sixty days after the date thereof. *Rev. Laws*, c. 167, §§ 21–23. The first Monday of every month shall be the return day in every county for writs and other processes issuing out of the Supreme Judicial Court or the Superior Court, and Saturday of each week shall be the return day in police, district and municipal courts. *Rev. Laws*, c. 167, §§ 24, 25. The time for the entry of a writ cannot be extended beyond the next regular return day succeeding the day on which the writ is made returnable. *Dudley v. Keith*, 158 Mass. 104.

SECTION 4. *Corporations answerable in trustee process.* — A corporation may be summoned as a trustee of the defendant in an action commenced by the trustee process, and all personal actions, except actions of tort for malicious prosecution, for slander or libel or for assault and battery and except actions of replevin, may be so commenced. But a foreign corporation shall not be summoned as a trustee unless it has a usual place of business in the common-

wealth. *Rev. Laws*, c. 189, § 1. As to what constitutes an established and usual place of business within the meaning of the statute, see cases under Section 1.

Return of writ. — A trustee writ which is issued by a police, district or municipal court or by a trial justice shall be returnable not more than thirty days after the date thereof. *Rev. Laws*, c. 189, § 6.

Appearance and answer of trustee. — A corporation which is summoned as trustee may appear and answer by its cashier, treasurer, secretary or such other officer as it shall appoint, or as the court or justice shall require to attend for that purpose, and his answer and examination, under oath, shall be received as the answer and examination of the corporation. *Rev. Laws*, c. 189, § 14. Such answer shall, in the Supreme Judicial Court or Superior Court, be filed within ten days, and in a police, district or municipal court, or before a trial justice, within three days, after the return day of the writ, unless further time is allowed by the court or justice. The answer shall disclose plainly, fully and particularly what goods, effects or credits, if any, of the defendant were in the hands or possession of the trustee when the writ was served upon it. *Rev. Laws*, c. 189, § 9.

Liability for false answer. — If an officer, agent or other person who appears and answers for a corporation which is summoned as trustee knowingly and wilfully swears falsely in his answer or upon his examination, he shall be liable in an action of tort to the plaintiff in the trustee process, or to his executor or administrators, for the full amount due on the judgment recovered therein, with interest, to be paid out of his own goods and estate. *Rev. Laws*, c. 189, § 18. An action cannot be maintained against a person who has been summoned as a trustee for knowingly and wilfully swearing falsely on his examina-

tion on the testimony of one witness only to the falsity of the answer, but the same amount of evidence is required as would be necessary to convict the defendant of perjury. *Laughran v. Kelly*, 8 Cush. 199; *Nutter v. King*, 152 Mass. 355. Such action does not survive as against the executor or administrator of the defendant. *Stillman v. Hollenbeck*, 4 Allen, 391.

SECTION 5. **Admission of corporate capacity.** — If it is alleged in an action at law or suit in equity that a party is a corporation, such allegation shall be taken as admitted unless the party controverting it files in court, within the time allowed for the answer thereto, or within ten days after the filing of the paper which contains such allegation, a special demand for its proof. *Rev. Laws*, c. 173, § 123. Prior to St. 1881, c. 113, a general denial by the defendant put in issue the corporate existence of the plaintiff. *Goodwin Invalid Bedstead Co. v. Darling*, 133 Mass. 358, and cases cited. Such demand for proof cannot be made for the first time in the Superior Court on appeal, although the rules of the court below do not require the defendant to answer in writing. *Cabana v. Holyoke Conclave*, 160 Mass. 1.

SECTION 6. **Signing pleadings.** — If a corporation is a party to an action or proceeding under the provisions of chapter 173 of the Revised Laws, all precepts, answers, replications or other papers requiring the signature or oath of the party may be signed or sworn to in behalf of the corporation by an officer or agent thereunto specially authorized. *Rev. Laws*, c. 173, § 122.

SECTION 7. **Examination on interrogatories.** — If a corporation is a party to an action, the adverse party may examine the president, treasurer, clerk or a director, manager or superintendent or other officer thereof as if he were a party. *Rev. Laws*, c. 173, § 61. The foregoing provisions

do not authorize the interrogation of officers of a municipal corporation which is a party to an action. *Linehan v. Cambridge*, 109 Mass. 212. As to how far an officer of a corporation is bound to seek information from the agents and servants of a corporation in order to answer interrogatories as to facts which are not within his own knowledge, see *Gunn v. New York, New Haven, etc. R. R. Co.*, 171 Mass. 417; *Toland v. Paine Furniture Co.*, 179 Mass. 501; *Robbins v. Brockton Street R. R. Co.*, 180 Mass. 51.

SECTION 8. *Levy of executions against corporations.*—An execution against a corporation, if levied upon corporate property, shall be levied in the same manner as other executions, except as provided in chapters one hundred and nine, one hundred and fifteen and one hundred and eighteen of the Revised Laws. *Rev. Laws*, c. 177, § 30. The exception referred to in chapter one hundred and nine is, with the rest of that chapter, expressly repealed so far as it relates to corporations which are subject to the Business Corporation Law of 1903, and the exceptions referred to in chapters one hundred and fifteen and one hundred and eighteen relate to banking and insurance corporations which are expressly excluded from the operation of the Business Corporation Law. The statutory provisions regulating the levy of execution on personalty and realty are found in chapters one hundred and seventy-seven and one hundred and seventy-eight of the Revised Laws.

Scire facias after ineffectual levy on stockholder.—By *Rev. Laws*, c. 177, § 21, it is provided that if an execution against a corporation is satisfied in whole or in part by service or levy on the person or property of a member thereof, and the property levied on, or damages for the service or levy, are subsequently recovered by such member from the officer or judgment creditor, the creditor may have a writ of *scire facias* on his judgment, and shall

thereupon be entitled to a new execution for the amount then remaining due to him. This statute, it is believed, is wholly obsolete, and was originally enacted in connection with a method of enforcing the collection of corporate debts, which was superseded by St. 1862, c. 218. The Revised Statutes, c. 38, § 30, provided that the persons and property of stockholders might be taken on execution for a debt of the corporation for which they were liable, in the same manner as on executions issued against them for their individual debts. In 1851, the statute from which the provision of the Revised Laws in question is derived was enacted. St. 1851, c. 213. Shortly afterward, the legislature enacted, St. 1851, c. 315, that the person or property of a stockholder should not be taken on an execution issued in an action against a corporation unless the stockholder were summoned in such action. The last-named statute was embodied in Gen. Sts. c. 60, §§ 32-34, and these provisions of the Gen. Sts. were expressly repealed by St. 1862, c. 218, which substituted for the former method of enforcing the collection of corporate debts the existing remedy by a creditors' bill in equity against the stockholders after an ineffectual demand on execution against the corporation itself. The statute in question is, therefore, at the present time inoperative, and is misleading, so far as it appears to countenance a levy on the person or property of stockholders.

SECTION 9. Costs. — If a corporation is entitled to costs, travel shall be computed from the place in which the corporation is situated, if it is in its nature local; otherwise, from the place in which its business is chiefly or commonly transacted. *Rev. Laws*, c. 203, § 30.

INFORMATIONS IN THE NATURE OF A QUO WARRANTO.

SECTION 10. Informations in the nature of a quo warranto. — A person whose private right or interest has been injured or is put in hazard by the exercise of a franchise or privilege not conferred by law by a private corporation or by persons claiming to be a private corporation, whether he is a member of such corporation or not, may apply to a justice of the Supreme Judicial Court in any county for leave to file an information in the nature of a *quo warranto*. *Rev. Laws*, c. 192, § 6.

Nature of proceeding. — An information in the nature of a *quo warranto* was originally a common law process, and was a criminal proceeding in which, if the issue was found against the defendant, in addition to a judgment of ouster, a fine might be imposed, and the attorney general had the right, *ex officio*, to bring it, without leave of court, to try the title to a public office. But, at common law, a private individual could not, without the intervention of the attorney general, file such information as of right or by leave of court, nor could he use the name of the attorney general for such purpose. The practice of permitting a private individual to apply to the Supreme Judicial Court for leave to file an information in the nature of a *quo warranto* rests, it seems, upon statute, and the first statute which authorized it was St. 1851, c. 238, §§ 55-64. That statute was repealed by St. 1852, c. 812, by §§ 42-50 of which it was substantially re-enacted. See Gen. Sts. c. 145, §§ 16-24; Pub. Sts. c. 186, §§ 17-25. *Goddard v. Smithett*, 3 Gray, 116; *Rice v. Nat. Bank of the Commonwealth*, 126 Mass. 300; *Attorney General v. Sullivan*, 163 Mass. 446; *Haupt v. Rogers*, 170 Mass. 71. "The proceedings," it was said in the case last cited, "were not intended to be used where a corporation has been duly organized, and is not attempting

to exercise any franchise or privilege not conferred by law, but where the alleged grievance is that certain incorporators or stockholders have been deprived of their rights by other incorporators or stockholders in the attempted transfer of the property and franchise of the corporation, or in the election of its officers, or in the internal management of the corporation." "So long as private corporations act within their charter and the laws applicable thereto, and do not violate the general laws, the public is not concerned in their internal management."

The cases in which petitions under this statute have been granted or dismissed are consistent with the foregoing definition of the application of the statute. In *Hastings v. Amherst & Belchertown R. R. Co.*, 9 Cush. 596, a stockholder of a railroad corporation was denied leave to file an information against the corporation merely because it had issued stock below par and had begun to construct its road before the requisite amount of stock had been subscribed, and because, its charter not requiring the northern terminus of the southern section of the road to be in the village of Amherst, it had taken land for a route which did not terminate in either village of that town. In none of these acts, it was held, had the corporation exercised a franchise not granted. In *Boston & Providence R. R. Co. v. Midland R. R. Co.*, 1 Gray, 341, the petition to file an information against the respondent for an alleged illegal change of the location of a portion of its road was dismissed because it appeared that such change was authorized by law. In *Goddard v. Smithett*, 3 Gray, 116, in which it was strongly intimated that a religious society was not a private corporation within the meaning of the statute, the court was inclined to the opinion that an informal, irregular, and even illegal exercise of the franchise by a private corporation, or by persons claiming to be its

officers, did not authorize the granting of an information against the corporation. In *Boston Rubber Shoe Co. v. Boston Rubber Co.*, 149 Mass. 436, the petition alleged that the respondent, having been incorporated by a name identical with a trade name which had been used by the petitioner for thirty years, had continued for ten years to exercise its franchise in a different line of the same business without injury or inconvenience to the petitioner, except such as was caused by the confusion of their mail matter, but that the respondent was preparing, in the exercise of a franchise or privilege not conferred by law, to engage in the same line of business as the petitioner, and to stamp its name on the articles manufactured by it, and that by the confusion of letters, orders, etc., the petitioner would be injuriously affected and its private right and interest put in hazard. The petition was dismissed on the ground that, the respondent being lawfully entitled to its corporate name, the wrongful use of it as a trade name was not the exercise of a franchise not conferred by law, and because it was not shown that the right or interest of the petitioner had actually then been injured or put in hazard. In *Hartnett v. Plumbers' Supply Association*, 169 Mass. 229, leave was granted to file an information against the respondent which was a corporation chartered under Pub. Sts. c. 115, for the purposes of "promoting pleasant relations among its members; discussing, arbitrating, and settling all matters pertaining to the prosperity and promotion of the jobbing plumbers' supply business, and establishing and maintaining a place for social meetings." It appeared that the corporation consisted of dealers in plumbers' supplies; that the corporation, claiming to act under its franchises, took proceedings to compel delinquent debtors of its members to pay, by sending notices to them and also to such members, thereby

exposing their delinquencies and preventing them from obtaining credit, and also required them to submit disputed claims to arbitration. The court held that the respondent's charter conferred upon it no such rights; that such proceedings were not germane to the purposes of its incorporation; and that, if such proceedings were lawful, such a corporation was a business enterprise which should have a capital stock and should comply with the requirements of Pub. Sts. c. 106. In *Haupt v. Rogers*, 170 Mass. 71, a petition was dismissed which alleged that certain officers of a corporation undertook, without the knowledge and consent of the petitioners, to sell and transfer the franchise and all rights arising thereunder, and all the rights to subscribe to the capital stock; and that, after such attempted transfer, a new board of directors was chosen without the knowledge or consent of the petitioners, who had intruded themselves into the offices of directors. The court said that "if the rights of the petitioners have been violated by the sale or attempt to sell and transfer the charter of the corporation, and by the subsequent election of officers of the corporation, the remedy, if there is any, undoubtedly should be by a suit in their own names."

The question whether a franchise has been improperly or fraudulently obtained or improvidently granted may arise in proceedings for a forfeiture in behalf of the public, but it is not open in proceedings by a private person under this statute, *Rice v. Nat. Bank of the Commonwealth*, 126 Mass. 300; *Boston Rubber Shoe Co. v. Boston Rubber Co.*, 149 Mass. 436; nor does the statute afford such a remedy at law as to deprive the court of jurisdiction in equity over a corporation in case of private nuisance. *Fall River Iron Works Co. v. Old Colony & Fall River R. R. Co.*, 5 Gray, 221.

The petition under this statute is not of itself either an action at law or a bill in equity, so that it is doubtful whether it is within the purview of *Rev. Laws*, c. 173, § 52, allowing amendments changing an action at law into a bill in equity. *Haupt v. Rogers*, 170 Mass. 71, 78.

SECTION 11. Hearing on petition. — The court shall give a summary hearing, and if it appears that there is probable cause to believe that the respondent has exercised a franchise or privilege not conferred by law, whereby the private right or interest of the complainant has been injured or is put in hazard, shall grant leave to file the information, which shall be filed in the county in which the respondent has its principal place of business. A copy of the information, with an order of notice returnable, and to be served, when and as the court may order, shall be served on the respondent and on the attorney general. If leave is given to file such information, the court, at any time before final judgment, may issue a writ of injunction restraining the respondent from exercising the franchise or privilege in question until the further order of the court. *Rev. Laws*, c. 192, §§ 7, 8.

SECTION 12. Intervention of attorney general. — If the attorney general believes that there has been a usurpation of a franchise or privilege not conferred by law, he may intervene, have control of the subsequent proceedings and demand a judgment of fine and forfeiture, and the complainant shall no longer be liable for costs. The court shall enter judgment according to the principles of the common law. *Rev. Laws*, c. 192, § 9.

SECTION 13. Judgment and costs. — If the attorney general does not intervene, and the court finds that the respondent has exercised a franchise or privilege not conferred by law, judgment of forfeiture shall not be entered, but judgment shall be entered that the corporation, or the

persons claiming to be such, be perpetually excluded from the exercise of such franchise or privilege, and that the directors, managers, or agents, guilty of the usurpation pay the costs of the complainant. If the court finds that the respondent has not exercised a franchise or privilege not conferred by law, he shall recover costs. *Rev. Laws*, c. 192, §§ 10, 11.

INFORMATION FOR FORFEITURE OF CHARTER.

SECTION 14. *Information for forfeiture of charter.* — In order to obtain a declaration of the forfeiture of the charter of a corporation for a nonuser or misuser of its franchise it is the duty of the attorney general to proceed in behalf of the commonwealth by an information in the nature of a *quo warranto*. Such an information is a common law proceeding, and the pleadings and trial must conform to common law procedure, and it should be prosecuted at the expense of the commonwealth by or under the immediate direction of the attorney general. If mention of relators is made in the information, it may be rejected as surplusage. *Attorney General v. Adonai Shomo Corporation*, 167 Mass. 424, and cases cited.

INDICTMENTS AGAINST CORPORATIONS.

SECTION 15. *Indictments and proceedings thereon.* — By various provisions of the statutes, as for instance the statutes regulating the employment of labor, corporations, as well as natural persons, are subject to a fine for the violation thereof. By *Rev. Laws*, c. 220, §§ 85, 36, it is provided that if a corporation, after being duly served with process, fails to appear and answer to an indictment or complaint which is brought against it under the laws of this commonwealth, its default shall be recorded, the charges in the indictment or complaint taken to be true,

and judgment shall be rendered accordingly. If judgment is rendered against a corporation upon an indictment or complaint under the laws of this commonwealth, the court may issue a warrant of distress to compel the payment of the penalty prescribed by law, with interest.

ATTACHMENT OF AND LEVY ON CORPORATE SHARES.

SECTION 16. *Attachment of corporate shares.* — The share or interest of a stockholder in a corporation organized under the laws of this commonwealth or of the United States and located or having a general office in this commonwealth may be attached by leaving an attested copy of the writ, without the declaration, and of the return of the attachment, with the clerk, treasurer or cashier of the company, if there is such officer; otherwise, with any officer or person who has at the time the custody of the books and papers of the corporation. *Rev. Laws*, c. 167, § 66. An attachment of stock under the provisions of this statute will not be effective as against a prior or subsequent delivery of a certificate of the stock to a bona fide purchaser, with a written transfer thereof signed by the owner of the certificate, in accordance with the provisions of St. 1903, c. 437, § 28. The transfer of the certificate, by virtue of the statute, transfers the title as against all parties, including attaching creditors. *Andrews v. Worcester, Nashua & Rochester R. R. Co.*, 159 Mass. 64; *Clews v. Friedman*, 182 Mass. 555. Whether a previously attaching creditor would have any remedy in equity or otherwise, to prevent the transfer of a certificate after an attachment, *quære*. See *Clews v. Friedman*, *ubi supra*.

Levy of execution. — If the shares or interest of a stockholder have been attached in the same action in which the execution is issued, the officer shall proceed in seizing and

selling them on the execution in the same manner as in selling other personal property. If they have not been so attached, he shall leave an attested copy of the execution with the clerk, treasurer or cashier of the corporation, if there is any such officer; otherwise, with any officer or person who has the custody of the books and papers of the corporation; and such shares or interest shall be considered as seized on execution when the copy is so left, and shall be sold on execution in the same manner as other personal property. *Rev. Laws*, c. 177, §§ 47, 48.

Disclosure of shares of debtor.—If the officer who has a writ of attachment against a stockholder exhibits the writ to such officer of the corporation as is appointed to keep a record or account of the shares or interest of the stockholders therein, and requests a certificate of the number of shares or amount of the interest held by the defendant, or if an execution is exhibited to such corporate officer, he shall give a certificate to the officer who holds the writ or execution of the number of shares or amount of the interest held by the defendant or the judgment debtor, as the case may be. If he unreasonably refuses so to do, or if he wilfully gives a false certificate thereof, he shall be liable in an action of tort for double the amount of the damages caused by such refusal or false certificate, unless the judgment is satisfied by the original defendant. *Rev. Laws*, c. 167, § 68; c. 177, § 49.

Certificate and dividends to purchaser.—An attested copy of the execution and of the return thereon shall, within fourteen days after the sale, be left with the officer of the company whose duty it is to record transfers of shares. The purchaser shall thereupon be entitled to a certificate of the shares bought by him upon payment of the fees therefor and for recording the transfer; and, if the shares or interest of the judgment debtor are attached in

the action upon which the execution issued, the dividends accruing after the attachment shall be held as security to satisfy the final judgment, and the purchaser shall be entitled to them. *Rev. Laws*, c. 167, § 67 ; c. 177, §§ 50, 51.

If, after an attachment or seizure of corporate shares on execution by one officer, they are attached or seized on execution by another officer, the latter officer shall give notice to the officer who sells them under the first attachment or execution, who, if before such notice he has paid to the debtor the balance of the proceeds of the sale, shall not be liable to the person claiming under the subsequent attachment or seizure. *Rev. Laws*, c. 177, § 45.

SECTION 17. Levy on corporate shares for taxes. — If a person refuses or neglects to pay his tax for fourteen days after demand the collector shall levy it by distress or seizure and sale of his goods, including any share or interest he may have as a stockholder in a corporation incorporated under authority of this commonwealth or under the laws of the United States and located or having a general office in this commonwealth. The seizure of a share of stock or other interest in a corporation may be made by leaving with its clerk, treasurer or cashier, if there is such officer, otherwise, with any officer or person who has at the time the custody of its books and papers, an attested copy of the warrant, with a certificate thereon, under the hand of the collector, stating the tax which the stockholder is liable to pay, and that because of his refusal or neglect to pay, the collector has seized such share or interest. The sale shall be made in the manner prescribed for the sale of goods by collectors, and shall be subject to the provisions of sections forty-nine and fifty of chapter one hundred and seventy-seven of the Revised Laws. *Rev. Laws*, c. 13, §§ 20, 23. If shares in a corporation are seized and sold by the collector in accordance with the provisions of statute

on a warrant from assessors who have jurisdiction of the subject-matter and, prima facie, a lawful authority to issue such warrant, and there is nothing on the face of the proceedings to indicate a want of jurisdiction, or any error or defect therein, the corporation, if not bound so to do, is, at any rate, authorized to issue a new certificate of the shares to the purchaser irrespective of the validity of the assessment. *Smith v. Northampton Bank*, 4 Cush. 1, 10. If shares are not sold for taxes until more than seven days after the seizure, as required by law, the proceedings are void, no title passes to the purchaser, and the corporation is not authorized to issue to him a new certificate. *Noyes v. Haverhill*, 11 Cush. 838.

REGISTRATION OF SECURITIES AND INTEREST THEREON.

SECTION 18. Issue of registered bonds.—A corporation which is organized under the laws of this commonwealth may, at the request of the owner or holder of a bond, promissory note or certificate of indebtedness which is issued by it payable to bearer, at any time more than one year before the maturity thereof, issue in exchange therefor a bond, note or certificate of the same effect, payable to the owner or holder by name. A person to whom such registered security is transferred by operation of law or by assignment acknowledged before an officer authorized to take acknowledgments of deeds shall be entitled in exchange therefor to a new bond, note or certificate of the same effect, payable to him by name. *Rev. Laws*, c. 73, §§ 4, 5. Such corporation shall keep a register showing the number, date, amount and rate of interest of each registered security so issued by it, of the date of maturity and of the name of the payee, and of the bonds, notes or certificates, if any, received in exchange therefor; and

shall be entitled to a fee of fifty cents for each bond, note or certificate so registered. *Rev. Laws*, c. 73, § 6.

SECTION 19. Rate of interest on bonds. — No bond issued by a corporation shall bear interest at a yearly rate exceeding seven dollars upon each hundred. *Rev. Laws*, c. 73, § 8.

CRIMINAL PROVISIONS.

SECTION 20. Unauthorized issue of stock. — An officer, agent, clerk or servant of a corporation, or any other person, who issues or signs with intent to issue a certificate of stock in a corporation, or who issues, signs or indorses with intent to issue, a bond, note, bill or other obligation or security in the name of such corporation, beyond the amount authorized by law or limited by the legal votes of such corporation or its proper officers, or negotiates, transfers or disposes of such certificate with intent to defraud, shall be punished by imprisonment in the state prison for not more than ten years or in the house of correction for not more than one year. *Rev. Laws*, c. 208, § 56.

SECTION 21. Fraudulent issue of stock. — An officer, agent, clerk or servant of a corporation, or any other person, who fraudulently issues or transfers a certificate of the stock of a corporation to a person who is not entitled thereto, or who fraudulently signs such certificate, in blank or otherwise, with the intent that it shall be so issued or transferred by himself or any other person, shall be punished by imprisonment in the state prison for not more than ten years or in the house of correction for not more than one year. *Rev. Laws*, c. 208, § 57.

SECTION 22. False entry, etc. in books of corporation. — An officer of a corporation or an agent, clerk or servant of a corporation, who makes a false entry or omits to make

a true entry in any book of such corporation, with intent to defraud, and any person whose duty it is to make a record or entry of the transfer of stock, or of the issuing or cancelling of certificates thereof, or of the amount of stock issued by a corporation, in any book thereof, who, with intent to defraud, omits to make a true record or entry thereof, shall be punished by imprisonment in the state prison for not more than ten years or in the house of correction for not more than one year. *Rev. Laws*, c. 208, § 58.

SECTION 23. **Books of corporation, evidence.**— Upon the trial of a person for a crime under the provisions of the three preceding sections, the books of any person, firm or corporation, to which he had access or the right of access, shall be admissible in evidence. *Rev. Laws*, c. 208, § 59.

SECTION 24. **Fraudulent use of credit of corporation.**— An officer, agent, clerk or servant of a corporation, which is organized or doing business in this commonwealth, who wilfully uses the name of such corporation, or his own name as such officer, agent, clerk or servant, to obtain money upon the credit of such corporation for his own use or benefit, without authority from such corporation, or who fraudulently lends, invests or appropriates the money or disposes of the property of such corporation, or fraudulently converts it, shall be punished by imprisonment in the state prison for not more than ten years. *Rev. Laws*, c. 208, § 62.

APPENDIX.

APPENDIX.

FORMS AND PRECEDENTS.

THE following forms and precedents may be divided into two classes. Forms numbered 1 to 80 are statutory forms expressly referred to in the Business Corporation Law, and they are arranged, so far as practicable, in the order of reference. Of these, such as have been prepared and adopted by the commissioner of corporations are indicated by the words "Official Form" printed immediately under the name of the form. The remaining forms are alternative, for use in the preparation of the agreement of association and of the by-laws. An effort has been made to provide an adequate number of such forms defining, limiting, or regulating the purposes and powers of the corporation, the classification, terms, and voting power of its stock, the powers of its board of directors and of its executive committee, and the manner in general of conducting the business of the corporation.

FORM 1.

ARTICLES OF ADOPTION.

(St. 1903, c. 437, § 2.)

THE

COMPANY.

In accordance with the provisions of chapter 437 of the Acts of the Commonwealth of Massachusetts for the year 1903, and of all acts amendatory thereof or additional thereto, the undersigned, being the president, treasurer, and a majority of the directors of

Company, hereby certify

1. That the said Company was incorporated by special law before the eleventh day of March, in the year 1831, to wit, — upon the day of in the year

2. That the following is a true copy of its certificate of organization : —

3. That at a meeting of the stockholders of the said corporation duly called and held on the day of and within thirty days preceding the date hereof, the following amendment to the said certificate of organization was duly adopted by the affirmative vote of two-thirds of all its stock outstanding, to wit : —

Signed at this day of 19

President.
Treasurer.
 } *Majority of*
 } *Directors.*

COMMONWEALTH OF MASSACHUSETTS.

ss.

19

Then personally appeared the above-named
 and severally made oath that the foregoing certificate, by them
 subscribed, is true, to the best of their knowledge and belief.

Before me,

Justice of the Peace.

FORM 2.

AGREEMENT OF ASSOCIATION.

[OFFICIAL FORM.]

(St. 1903, c. 437, § 8.)

We, whose names are hereto subscribed, do by this agreement associate ourselves with the intention of forming a corporation according to the provisions of chapter 437 of the Acts of the year 1903, of the Commonwealth of Massachusetts, and the acts in amendment thereof and in addition thereto.

The name by which the corporation shall be known is

The location of the principal office of the corporation within the Commonwealth is the _____ of _____ and outside the Commonwealth the _____ of _____ State of _____

The purposes for which the corporation is formed and the nature of the business to be transacted by it are as follows : —

The total amount of its capital stock to be authorized is _____ dollars.

The par value of its shares is { Preferred _____ dollars.
Common _____ dollars.

The number of its shares is { Preferred _____
Common _____

[NOTE.—State “the restrictions, if any, imposed upon the transfer of stock, and if there are to be two or more classes of stock, a description of the different classes and a statement of the terms on which they are to be created and the method of voting thereon.”]

[NOTE.—State any other provisions not inconsistent with law for the conduct and regulation of the business of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or any class of stockholders.]

The first meeting shall be called by _____ of _____ (or, if notice is waived) _____ and we hereby waive all requirements of the statutes of Massachusetts for notice of the first meeting for organization, and appoint the _____ day of _____ at _____ o'clock M., at _____ as the time and place of holding said first meeting.

The names and residences of the incorporators and the amount of _____ stock subscribed for by each are as follows : —

NAME.	RESIDENCE.	AMOUNT SUBSCRIBED FOR.
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IN WITNESS WHEREOF, we have hereunto set our hands, this _____ day of _____ in the year one thousand nine hundred and _____

FORM 3.

NOTICE OF FIRST MEETING.

[OFFICIAL FORM.]

(St. 1908, c. 487, § 9.)

To

You are hereby notified that the first meeting of the subscribers to an agreement to associate themselves with the intention of forming a corporation to be known by the name of _____ dated _____ for the purpose of organizing said corporation by the adoption of by-laws and election of officers and the transaction of such other business as may properly come before the meeting, will be held on _____ the _____ day of _____ at _____ o'clock, M., at _____

one of the subscribers to said agreement.

19

ss.

19

I certify that I have served the foregoing notice upon each of the subscribers by copy served as follows: (State whether "delivered in hand" or "deposited in the post office, post-paid, addressed to each at his place of business or of residence," or left at his residence or usual place of business), seven days at least before the day fixed for the first meeting.

ss.

19

Subscribed and sworn to,

Before me,

Justice of the Peace.

FORM 4.

BY-LAWS.

(St. 1903, c. 437, § 10.)

ARTICLE I.

NAME, LOCATION, AND SEAL.

The corporation shall be known by the name of
Company. Its principal place of business shall be at number
Street, Massachusetts. It shall
have a corporate seal bearing the name of the corporation, and
other such device or inscription as the board of directors may
determine. The board of directors may change the form of the
seal or the inscription thereon at pleasure.

ARTICLE II.

ANNUAL MEETING.

SECTION 1. *Time and Place.*—The annual meeting of the
stockholders of said corporation shall be held on the
of in each year after 19 at o'clock in
the noon,¹ at its principal office within the Commonwealth,
or at such other place within the Commonwealth as may be
designated in the notice or waiver of notice of such meeting.

SECTION 2. *Order of Business.*—The order of business at
annual meetings of stockholders shall be as follows:—

- (1) Roll call and determination of quorum.
- (2) Reading of minutes of preceding meeting.
- (3) Election of directors and officers and their qualification
if required by law.
- (4) Reports of committees.
- (5) Reports of officers.
- (6) Unfinished business.
- (7) New business.

¹ See the Business Corporation Law, Section 20, which provides that
the annual meeting shall be held within sixty days after the date of the end
of the fiscal year of the corporation.

ARTICLE III.

OFFICERS.

The officers of the said corporation shall be a board of not less than three nor more than directors, who need not be stockholders of the corporation and of whom the president and vice-president respectively shall be one, a president, a vice-president, a treasurer, and a clerk. Said officers, with the exception of the president and vice-president, shall be elected by ballot by the stockholders at their annual meeting. They shall hold their respective offices for the term of one year, and until their successors are chosen and qualified.

The president and vice-president shall be elected by ballot by the directors at a meeting of the board to be held immediately after the adjournment of the annual meeting of the stockholders.

The compensation of all officers shall be determined by the directors at any meeting called for that purpose.

ARTICLE IV.

DUTIES OF THE BOARD OF DIRECTORS.

SECTION 1. *Meetings.*—The president may call meetings of the board of directors at such times and in such places within and without the Commonwealth, as he may deem expedient, and shall call a meeting of the board of directors when thereto requested in writing by a majority of said board; and if he neglects or refuses to call such meeting, a majority of the directors may call it. A written or printed notice of all meetings of the board of directors, signed by the president or by a majority of the board of directors, or, at his or their request, by the clerk, shall be personally delivered to each director, or forwarded by mail or telegraph to him at his last known residence or place of business, at least days previous to the time of such meeting. Any meeting of the directors shall be a legal meeting, without notice, if each director, whether present or absent, by a writing which is filed with the records of the meeting, waives such notice. The records of all meetings of the board of directors may be kept at such place within

or without the Commonwealth, as the directors may from time to time determine.

SECTION 2. *Quorum.*—A majority of the board of directors shall constitute a quorum for the transaction of business. Meetings may be adjourned by less than a quorum.

SECTION 3. *Powers of Directors.*—The board of directors shall have the management of all the property and business of the corporation, except as herein otherwise provided, and in addition shall have power :

(a) To appoint and remove all officers, employees, and agents of the corporation, except the president, vice-president, treasurer, and clerk, and to fix their compensation.

(b) To make rules and regulations for the guidance of the officers and the management of the business affairs of the corporation.

(c) To declare dividends out of the net earnings of the corporation.

(d) To borrow money and incur such indebtedness as it may deem necessary; to authorize the making, drawing, or acceptance of contracts, bonds, bills of exchange, and promissory notes on behalf of and for the purposes of the corporation.

(e) To purchase and acquire for the corporation, upon such terms and conditions as it may determine, such property, real or personal, as it deems expedient for the purposes for which the corporation is organized.

In addition to the foregoing powers, the board of directors may exercise all the other powers of the corporation, except such as, by these by-laws or by the laws of the Commonwealth of Massachusetts, are to be exercised exclusively by the stockholders.

SECTION 4. *Vacancies.*—The board of directors may fill vacancies in its own number or in any other office, which are caused by resignation, death, failure to elect, or otherwise. The officers so elected shall hold office until the next annual meeting of the stockholders and until their successors are duly elected and qualified.

ARTICLE V.**EXECUTIVE COMMITTEE.**

The board of directors may, by the vote of a majority of the whole board, designate three or more of its members to constitute an executive committee, and shall prescribe suitable regulations for the conduct of its affairs. The said committee shall, for the time being, except as limited in said vote, have and exercise all the powers of the board of directors in the management of the business and affairs of the corporation; and it may authorize the seal of the corporation to be affixed to all such contracts, papers, and documents as may require it. The executive committee shall organize by the election of a chairman and shall keep a record of its proceedings.

ARTICLE VI.**DUTIES OF THE PRESIDENT AND VICE-PRESIDENT.**

The president of the corporation shall be a member of the board of directors, and he shall preside, when present, at all meetings of the stockholders and of the board of directors. He shall be charged with the general oversight, care, and management of all property and business of the corporation in all its departments, and of its officers, agents, and servants, except so far as their duties may be specifically prescribed by law, by the by-laws, or by the directors. He shall sign all certificates of stock, bonds, deeds, and special contracts of the corporation.

If the president be absent or unable to perform the duties of his office, the vice-president shall have all the powers of the president while such absence or inability to act continues, and the exercise of such powers by him shall be conclusive evidence of his authority to any one dealing with the corporation.

ARTICLE VII.**DUTIES OF THE TREASURER.**

The treasurer shall have the custody of the funds of the corporation, and shall perform such other duties as may be from time to time prescribed by the board of directors. He shall,

when thereto required by the board of directors, give a bond to the corporation for the faithful performance of his duties, in such sum and with such sureties as said board may require.

ARTICLE VIII.

DUTIES OF THE CLERK.

The clerk shall be sworn to the faithful performance of his duties before entering upon the performance thereof. He shall attend all meetings of the stockholders and directors, and shall keep a record of their votes and of all business transacted at said meetings. He shall give notice of the annual meeting of the stockholders, and, at the request of the president or a majority of the directors, of meetings of the board of directors.

All meetings of the stockholders shall, unless notice is waived by all of the stockholders, be called by a written or printed notice stating the place, day, hour, and purposes of the meeting, which shall be given by the clerk, seven days at least before such meeting, to each stockholder, in the manner required by law.

ARTICLE IX.

STOCK VOTE.

Every stockholder¹ who is present at the meetings of the corporation shall have one vote for each share of stock owned by him. Absent stockholders may so vote by proxy if such proxy is dated within six months before the meeting at which it is to be used.

A majority of the whole number of shares of stock outstanding and entitled to vote which are represented in person or by proxy, shall constitute a quorum for the transaction of business, provided that no business, which by the requirements of the laws of the Commonwealth of Massachusetts or of the agreement of association requires the affirmative vote of more than a majority of the whole number of shares outstanding and entitled to vote, shall be transacted at any meeting until the

¹ If the voting rights of any class of stock is limited by the agreement of association, this clause should be modified to accord with the facts.

number of shares so required are represented in person or by proxy. If a quorum is not present, the meeting may be adjourned by a vote of the majority of the stockholders present and entitled to vote.

Votes cast for the election of directors and officers and upon the question of reducing the capital stock of the corporation shall be by ballot. Upon demand of any stockholder any vote upon any question shall be so cast.

ARTICLE X.

CERTIFICATES OF STOCK.

All certificates of stock issued to stockholders shall be in form conformable to law and shall certify the number of shares owned by each stockholder. They shall be sealed with the seal of the corporation, and signed by the president and treasurer in their official capacity. The form of all stock certificates, except so far as prescribed by law, shall be determined by the directors.

ARTICLE XI.

TRANSFER OF STOCK.

All shares of stock may be transferred by the person named as the stockholder in the certificate thereof, by an instrument in writing under his hand, separate from or indorsed upon, the certificate thereof, which instrument shall be recorded by the clerk of the corporation in a book to be kept by him for that purpose. The assignee named in such instrument so recorded, upon delivering it and the former certificate to the treasurer, shall be entitled to a new certificate.

ARTICLE XII.

TRANSFER AGENT AND REGISTRAR.

The board of directors may, from time to time, appoint such corporation or person as they may elect to act as the transfer agent or registrar of transfers of the corporation, and may require all stock certificates to bear the signatures of either or both.

ARTICLE XIII.

AMENDMENT, CHANGE, OR REPEAL.

These by-laws, or any of them, may be altered, amended, or repealed by vote of a majority of the whole number of shares issued and outstanding and entitled to vote which are represented in person or by proxy, at any meeting duly called and held for that purpose.

FORM 5.

MINUTES OF FIRST MEETING OF INCORPORATORS.

(St. 1908, c. 487, § 10.)

The first meeting of the incorporators of _____ Com-
pany was held at the principal office of the corporation, No. _____
Street, _____ Massachusetts, on the _____
day of _____ 19 _____ at _____ o'clock in the _____ noon (notice of
said meeting having been waived by all of the incorporators in
writing, indorsed upon the agreement of association, and the
time and place of said meeting having been fixed as aforesaid in
said waiver of notice¹).

There were present

being _____ of the said incorporators.

Upon motion duly made and seconded, Mr. _____ was
elected chairman of the meeting.

Upon motion duly made and seconded, it was

Voted, to proceed by ballot to the election of a temporary
clerk.

¹ *If the meeting has been called by notice, substitute the following : —*
pursuant to notice signed by _____ being thereto designated by the
agreement of association, a copy of such notice and an affidavit that it has
been duly served being as follows : —

[See Form 8.]

For form for minutes of first meeting of board of directors see Form 81.

COMMONWEALTH OF MASSACHUSETTS.

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Before me,

Upon motion duly made and seconded, it was *Voted*, to adopt the following by-laws :—

[See Form 4.]

who were declared elected, and thereupon severally accepted their election, and entered upon the discharge of the duties of their office.

Upon motion, duly made and seconded, it was

Voted, to proceed by ballot to the election of a treasurer. The whole number of ballots cast was _____ all of which were for _____ who was declared elected, and thereupon accepted his election, and entered upon the discharge of the duties of his office.

Upon motion, duly made and seconded, it was

Voted, to proceed by ballot to the election of a clerk. The whole number of ballots cast was _____ all of which were for _____ who was declared elected, and thereupon accepted his election, and entered upon the discharge of the duties of his office, after being duly qualified, as appears by the following record : —

COMMONWEALTH OF MASSACHUSETTS.

ss.

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Then personally appeared the above-named _____ and
made oath that he would faithfully discharge the duties of the
office of clerk of _____ Company.

Before me,

Justice of the Peace.

I, _____ temporary clerk of the first meeting of the
incorporators of _____ Company, hereby certify and attest
that the foregoing is a true and accurate record of the proceed-
ings held at said first meeting to and including the qualification
of the clerk of said corporation.

A true record.

Attest:

Temporary Clerk.

Upon motion, duly made and seconded, it was
Voted, to adjourn.

A true record.

Attest:

Clerk.

FORM 6.

ARTICLES OF ORGANIZATION.

[OFFICIAL FORM.]

(St. 1903, c. 437, § 11.)

We,

being a majority of the directors of the
elected at its first meeting in compliance with the requirements
of Section 11 of Chapter 437 of the Acts of 1903, do hereby
certify that the following is a true copy of the agreement of
association to form said corporation, with the names of the
subscribers thereto:—

We, whose names are hereto subscribed, do, by this agree-
ment, associate ourselves with the intention of forming a
corporation according to the provisions of chapter 437 of the

Acts of the year 1903, of the Commonwealth of Massachusetts, and the acts in amendment thereof and in addition thereto.

The name by which the corporation shall be known is

The location of the principal office of the corporation within the Commonwealth is the of and outside the Commonwealth the of State of

The purposes for which the corporation is formed and the nature of the business to be transacted by it are as follows: —

The total amount of its capital stock to be authorized is

		dollars.
The par value of its shares is	{ Preferred	dollars.
	{ Common	dollars.
The number of its shares is	{ Preferred	
	{ Common	

[NOTE. — State “the restrictions, if any, imposed upon the transfer of stock, and if there are to be two or more classes of stock, a description of the different classes and a statement of the terms on which they are to be created and the method of voting thereon.”]

[NOTE. — State any other provisions not inconsistent with law for the conduct and regulation of the business of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or any class of stockholders.]

The first meeting shall be called by of
(or, if notice is waived) and we
hereby waive all requirements of the statutes of Massachusetts
for notice of the first meeting for organization, and appoint the
 day of at o'clock M., at as
the time and place of holding said first meeting.

The names and residences of the incorporators and the amount of stock subscribed for by each are as follows: —

NAME.	RESIDENCE.	AMOUNT SUBSCRIBED FOR.
-------	------------	------------------------

IN WITNESS WHEREOF, we have hereunto set our hands, this
 day of in the year nineteen hundred
and

That the first meeting of the subscribers to said agreement was held on the _____ day of _____ in the year nineteen hundred and _____

That the amount of capital stock now to be issued is _____ shares of preferred stock,
_____ shares of common stock,
to be paid for as follows : —

AMOUNT AND CLASS OF STOCK ISSUED.

	SHARES PREFERRED.	SHARES COMMON.
IN CASH :		
In full		
By instalments		
Amount of instalment to be paid before com- mencing business		
IN PROPERTY :		
Real estate :		
Location		
Area		
Personal property :		
Machinery		
Merchandise		
Bills receivable		
Stock and securities		
Patent rights		
Trade marks		
Copyrights		
Good will		
Services		
Expenses		

[NOTE. — State clearly the nature of such services or expenses and the amount of stock to be issued therefor.]

The name, residence, and post office address of each of the officers are as follows : —

NAME OF OFFICER.	NAME.	RESIDENCE.	POST OFFICE ADDRESS.
President,			
Treasurer,			
Clerk or Secretary,			
Directors,			

IN WITNESS WHEREOF, we have hereunto signed our names,
this day of in the year nineteen hundred
and

COMMONWEALTH OF MASSACHUSETTS.

ss.

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Then personally appeared the above-named

and severally made oath that the foregoing certificate, by them
subscribed, is true, to the best of their knowledge and belief.

Before me,

Justice of the Peace.

CERTIFICATION.

Filed in the office of the secretary of the commonwealth,
19

I hereby certify that it appears, upon an examination of the
within written articles and the records of the corporation duly
submitted to my inspection, that the requirements of chapter
four hundred and thirty-seven of the Acts of nineteen hundred
and three relating to the organization of corporations have been
complied with, and I hereby approve said articles this
day of A. D. nineteen hundred and

Commissioner of Corporations.

(St. 1908, c. 487, § 14.)

{ shares preferred.
{ shares common.

That the amount of additional stock to be issued for cash,
property, services, or expenses is \$ _____ of which

{ shares are preferred.
{ shares are common.

To be paid for as follows :—

	PREFERRED.	COMMON.
IN CASH :		
In full		
By instalments		
Amount of first instalment		
IN PROPERTY :		
Real estate :		
Location		
Area		
Personal property :		
Machinery		
Merchandise		
Bills receivable		
Stocks and securities		
Patent rights		
Copyrights		
Trade marks		
Good will		
Services		
Expenses		

[NOTE. — State clearly the nature of such services and expenses.]

IN WITNESS WHEREOF, we have hereunto signed our names,
this _____ day of _____ in the year nineteen hundred and _____

COMMONWEALTH OF MASSACHUSETTS.

ss.

19

Then personally appeared the above-named

and severally made oath that the foregoing certificate, by them
subscribed, is true, to the best of their knowledge and belief.

Before me,

Justice of the Peace.

CERTIFICATION.

Filed in the office of the secretary of the commonwealth
19

I hereby approve the within certificate, this day of
A. D. nineteen hundred and

Commissioner of Corporations.

FORM 8.

DEMAND FOR PAYMENT OF SUBSCRIPTIONS

(St. 1903, c. 487, § 15.)

To

In accordance with the provisions of chapter 487 of the Acts of the Commonwealth of Massachusetts for the year 1903, and of all acts amendatory thereof or additional thereto, you are hereby notified that at a meeting of the board of directors of said corporation duly called and held on the day of 19 it was voted to require the payment of your subscription to shares of the capital stock of the Company in the following manner and at the following time, to wit, per cent to be paid on or before the day of 19 the balance payable in such proportions and at such times as the directors may hereafter require. All subscriptions shall be paid at the office of the corporation, No. Street,

You are further notified that upon your refusal or inability to pay the amounts hereby demanded for thirty days after the time limited in this notice for payment, your rights of subscription may be sold by public auction or be subject to forfeiture to the corporation according to law.

Clerk of the Board of Directors.

FORM 9.

CERTIFICATE OF STOCK RIGHTS.

(St. 1903, c. 437, § 15.)

THE

COMPANY.

Incorporated under the laws of the Commonwealth of
Massachusetts.

Capital stock, \$

This certifies that is entitled to receive
shares of the capital stock of the Company upon
the payment of dollars per share (in such instalments and
at such times and places as may be required by the board of
directors of the Company), upon demand therefor
being duly made according to law.

IN WITNESS WHEREOF, the said Company has
caused its seal to be hereto affixed and this certificate to be
executed by its president and treasurer this day
of 19

President.
Treasurer.

[SEAL]

FORM 10.

NOTICE OF SALE OF RIGHTS OF SUBSCRIPTION.

(St. 1903, c. 437, § 15.)

To Boston, 19

In accordance with the provisions of Chapter 437 of the Acts
of the Commonwealth of Massachusetts for the year 1903, and
of all acts amendatory thereof or additional thereto, you are
hereby notified that on the day of 19 a demand
was duly made upon you to pay to the Company
 dollars, being the payment due upon
your subscription for shares of its stock.

As you have neglected for thirty days after the time limited
in said demand to make such payment, you will hereby take

notice that, on the day of 19 at
 o'clock in the noon, at will be sold at public auction
 all your right, title, and interest in and to your rights of sub-
 scription for shares of the capital stock of the
 said corporation. From the proceeds of this sale, all amounts
 then due to the said Company will be paid to it with
 interest and incidental charges, and the balance will be paid
 to you, or your representatives or assignees, upon the surren-
 der and delivery of your certificate of right of subscription
 number

Treasurer.

FORM 11.

DEMAND FOR PAYMENT OF INSTALMENT DUE.

(St. 1908, c. 487, § 16.)

To

In accordance with the provisions of Chapter 487 of the Acts
 of the Commonwealth of Massachusetts for the year 1908, and
 of all acts amendatory thereof or additional thereto, you are
 hereby notified that at a meeting of the board of directors of
 said corporation duly called and held on the day of
 19 it was voted to require the payment of an instalment upon
 shares of the stock of the Company
 held by you. The said instalment is payable on or before the
 day of 19 at Checks may be
 drawn to the order of

You are further notified that upon your neglect to pay the
 instalment hereby demanded for thirty days after the time lim-
 ited in this notice for payment, your shares of stock may be sold
 by public auction in accordance with the provisions of law ; or,
 if they are not so sold, they will be subject to forfeiture to the
 corporation according to law.

Clerk of the Board of Directors.

FORM 12.

NOTICE OF SALE FOR NON-PAYMENT OF
INSTALMENTS.

(St. 1908, c. 487, § 16.)

BOSTON, 19

To

In accordance with the provisions of Chapter 437 of the Acts of the Commonwealth of Massachusetts for the year 1908, and of all acts amendatory thereof or additional thereto, you are hereby notified that on the day of 19 a demand was duly made upon you to pay to the Company on or before 19 dollars, being the instalment due upon shares of its stock standing in your name upon its books. As you have neglected to pay such instalment, you will hereby take notice that, on the day of 19 at o'clock in the noon, at

will be sold at public auction all your right, title, and interest in and to shares of its stock represented by certificate number issued to you 19

From the proceeds of this sale, all instalments then due to the said Company will be paid to it with interest and incidental charges, and the balance will be paid to you, or your representative or assignee, upon the surrender and delivery of your certificate of stock number

Treasurer.

FORM 13.

CLASSIFICATION OF DIRECTORS.¹

(St. 1908, c. 437, § 18.)

The directors of the corporation shall be divided into three classes in respect to the time for which they shall severally hold office; the classes to be equal in number if the whole number of directors is a multiple of three, but otherwise to be as nearly

¹ For alternative forms classifying directors, see Forms 68 and 69.

equal as possible. The first class shall be elected for a period of three years, the second class for a period of two years, and the third class for a period of one year; and at each annual election thereafter, the successors to the class of directors whose terms expire at such election shall be elected to hold office for three years, so that the term of office of at least one class shall expire in each year.

If the number of directors be increased, the new directors shall be so distributed among the three classes into which the board is divided that the classes shall be always, as nearly as may be, equal in numbers.

FORM 14.

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS.

(St. 1908, c. 437, § 20.)

THE

COMPANY.

Boston,

19

The annual meeting of the stockholders of the Company will be held on the day of A. D. 19 at o'clock in the noon, at in the Commonwealth of Massachusetts, for the purpose of electing a board of directors, a treasurer, a clerk, and (state any other officers to be elected or any other special business to be considered), and for the transaction of such other business as may properly come before the meeting.

Clerk.

FORM 15.

APPLICATION FOR WARRANT TO CALL MEETING, WARRANT, AND NOTICE.

(St. 1908, c. 437, § 21.)

To a Justice of the Peace for the Commonwealth of Massachusetts:—

In accordance with the provisions of Chapter 437 of the Commonwealth of Massachusetts for the year 1908, and of all

acts amendatory thereof or additional thereto, the subscribers, being three or more stockholders of the Company, a corporation duly organized under the laws of said Commonwealth, respectfully represent :

That by reason of the (state the cause) there is no person duly authorized to call or preside at a legal meeting of said corporation.

They therefore request that you will issue your warrant to one of said subscribers directing him to call (annual or special) meeting of the stockholders of said corporation to be held on the day of A. D. 19 at o'clock in the noon, at in the Commonwealth of Massachusetts, for the purpose of (state explicitly the business to be transacted) by giving such notice thereof as is required by law.

Dated at the day of A. D. 19

WARRANT TO CALL MEETING OF STOCKHOLDERS.

(St. 1903, c. 437, § 21.)

COMMONWEALTH OF MASSACHUSETTS.

To

Stockholder of the Company.

Pursuant to an application by three or more stockholders of the corporation, and in accordance with the provisions of Chapter 437 of the Acts of the Commonwealth of Massachusetts for the year 1903, and of all acts amendatory thereof or additional thereto, I hereby direct you to call (annual or special) meeting of the stockholders of the Company, to be held on the day of A. D. 19 at o'clock in the noon, at in the Commonwealth of Massachusetts, for the purpose (state explicitly the business to be transacted) by giving such notice thereof as is required by law.

If no officer of the corporation is present at the said meeting who is legally authorized to preside, I hereby further direct you to preside at said meeting until a clerk shall have been duly chosen and qualified.

Dated at the day of A. D. 19
Justice of the Peace.

NOTICE.

Pursuant to a warrant issued to me by a Justice of Peace for the Commonwealth of Massachusetts, directing me to call (annual or special) meeting of the stockholders of the Company, I hereby give notice that a meeting of said stockholders will be held on the day of A. D. 19 at o'clock in the noon at in the Commonwealth of Massachusetts, for the purpose of (State explicitly the business to be transacted.)
Dated at the day of A. D. 19

FORM 16.

STOCKHOLDERS' APPLICATION FOR SPECIAL MEETING. — NOTICE.

(St. 1903, c. 437, § 22.)

THE COMPANY.

Boston, 19

To Clerk of the Company.

In accordance with the provisions of Chapter 437 of the Acts of the Commonwealth of Massachusetts for the year 1903, and of all acts amendatory thereof or additional thereto, the undersigned, being three or more stockholders of the said Company, who are entitled to vote and who respectively hold the number of shares of its capital stock set against the name of each, being at least one-tenth part in interest of the capital stock of said corporation, hereby request you to call a special meeting of the stockholders of said corporation to be held on the day of 19 at o'clock in the noon, at in the Commonwealth of Massachusetts, for the purpose (State explicitly the business to be transacted.)

NAME OF STOCKHOLDER. NUMBER OF SHARES. CLASS OF STOCK.

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS.

(St. 1903, c. 487, § 22.)

A special meeting of the stockholders of the
Company will be held on the _____ day of _____ 19____
at _____ o'clock in the _____ noon, at _____ in the
Commonwealth of Massachusetts, for the purpose (state ex-
plicitly the business to be transacted) and for the transaction of
such other business as may properly come before the meeting.
[Name of president, clerk, or
majority of directors.]

FORM 17.

CERTIFICATE OF COMMON STOCK.

(St. 1903, c. 487, § 26.)

THE

COMPANY.

**Incorporated under the laws of the Commonwealth of
Massachusetts.**

Capital stock, \$

This certifies that _____ is the holder of _____ shares of the capital stock of The _____ Company, full paid and non-assessable, transferable only on the books of the corporation by the holder hereof in person or by duly authorized attorney upon the surrender of this certificate properly indorsed.

IN WITNESS WHEREOF, the said Company has caused its seal to be hereto affixed and this certificate to be executed by its president and treasurer this day of 19

[SEAL]

President.
Treasurer.

Shares, \$100 each.

FORM 18.

CERTIFICATE OF PREFERRED STOCK.

(St. 1908, c. 487, § 27.)

THE

COMPANY.

Incorporated under the laws of the Commonwealth of
Massachusetts.

Capital stock, \$

Preferred stock, \$

Common stock, \$

This is to certify that _____ is the holder of _____ shares of the preferred capital stock of the _____ Company, full paid and non-assessable, transferable only on the books of the corporation by the holder hereof in person or by duly authorized attorney upon the surrender of this certificate properly indorsed.

In accordance with the provisions of the agreement of association (or of the amended articles of organization, as the case may be) of the _____ Company, the holder of this certificate is entitled to receive out of the net proceeds of the corporation a semi-annual preferential cumulative dividend at the rate of _____ per centum per annum, commencing to accrue on the _____ day of _____ 19____ and payable on the first days of _____ and _____ in each year. This preferred stock is subject to be redeemed by the corporation at its par value upon such notice to the holder hereof as the directors may require on any interest day after the first day of _____ 19____ and, after this stock has been called for redemption as aforesaid, there shall be no obligation on the part of this corporation to pay any further dividend to the holders hereof. In the event of liquidation, the proceeds of such liquidation shall be first applied to the payment to the holders of the preferred stock of the sum of one hundred (100) dollars per share and accrued and unpaid dividends thereof. The balance remaining thereafter shall be divided among the holders of the common shares in proportion to their holdings. The holders of preferred and common shares shall have equal voting rights in the corporation. This certifi-

cate shall not be valid until counter-signed by the transfer agent of the company.

IN WITNESS WHEREOF, the said _____ Company has caused its seal to be hereto affixed and this certificate to be executed by its president and treasurer this _____ day of _____ 19 _____

President.

Treasurer.

[SEAL]

Shares, _____ each.

FORM 19.

ARTICLES OF AMENDMENT (GENERAL).

[OFFICIAL FORM.]

(St. 1908, c. 487, §§ 40, 41).

We, _____ president,
treasurer, and _____

being a majority of the directors
of _____
in compliance with the provisions of Chapter 487 of the Acts of 1908, and of all acts in amendment thereof and in addition thereto, do hereby certify that at a meeting of the stockholders of the said corporation, duly called for the purpose, and by the affirmative vote of _____ shares of the preferred stock and of _____ shares of the common stock of said corporation, being at least _____ of all the stock outstanding and entitled to vote, the following amendment or alteration in the _____ of said corporation was duly adopted, namely :

IN WITNESS WHEREOF, we have hereunto signed our names,
this _____ day of _____ in the year nineteen
hundred and _____

COMMONWEALTH OF MASSACHUSETTS.

ss.

19

Then personally appeared the above-named

and severally made oath that the foregoing certificate, by them subscribed, is true, to the best of their knowledge and belief.

Before me,

Justice of the Peace.

CERTIFICATION.

Filed in the office of the secretary of the commonwealth,
19

I hereby approve the within certificate, this
day of

A. D. nineteen hundred and

Commissioner of Corporations.

FORM 20.

ARTICLES OF AMENDMENT (INCREASE OF CAPITAL).

[OFFICIAL FORM.]

(St. 1908, c. 487, § 42.)

ARTICLE I. We, _____ president,
treasurer, and _____

being a majority of the directors

of

in compliance with the provisions of Chapter 437 of the Acts of 1908, and of all acts in amendment thereof and in addition thereto, do hereby certify that at a meeting of the stockholders of the said corporation, duly called for the purpose, and by the affirmative vote of _____ shares of the preferred stock and of _____ shares of the common stock of said corporation, being at least a majority of all the stock outstanding and entitled to vote, the following amendment authorizing an increase in the capital stock of said corporation was duly adopted, namely:

ARTICLE II. [Here insert an exact copy of the vote or votes authorizing the increase, and the "terms and manner of the disposition of such increased stock."]

ARTICLE III. That the total amount of capital stock already authorized is

{ shares preferred.
{ shares common.

The amount of capital stock already issued for cash payable by instalments is

{ shares preferred.
{ shares common.

upon which

dollars have been paid,

namely,

{ dollars on preferred stock.
{ dollars on common stock.

The amount of full paid capital stock already issued for cash is

{ shares preferred.
{ shares common.

for property is

{ shares preferred.
{ shares common.

for services and expenses

{ shares preferred.
{ shares common.

ARTICLE IV. That the amount of additional capital stock authorized is

{ shares preferred.
{ shares common.

To be paid for as follows :

	PREFERRED.	COMMON.
IN CASH :		
In full		
By instalments		
Amount of first instalment		
IN PROPERTY :		
Real estate :		
Location		
Area		
Personal property :		
Machinery		
Merchandise		
Bills receivable		
Stocks and securities		
Patent rights		
Copyrights		
Trade marks		
Good will		
Services		
Expenses		

[NOTE. — State clearly the nature of such services and expenses.]

IN WITNESS WHEREOF, we have hereunto signed our names,
this day of in the year nineteen
hundred and

COMMONWEALTH OF MASSACHUSETTS.

ss.

19

Then personally appeared the above-named

and severally made oath that the foregoing certificate, by them
subscribed, is true, to the best of their knowledge and belief.

Before me,

Justice of the Peace.

CERTIFICATION.

Filed in the office of the secretary of the commonwealth,
19

I hereby approve the within certificate, this day
of A. D. nineteen hundred and
Commissioner of Corporations.

FORM 21.

ARTICLES OF AMENDMENT (REDUCTION OF CAPITAL).

[OFFICIAL FORM.]

(St. 1903, c. 437, § 43.)

ARTICLE I. We, president,
treasurer, and

being a majority of the Directors
of
in compliance with the provisions of Chapter 437 of the Acts
of 1903, and all acts in amendment thereof and in addition
thereto, do hereby certify that at a meeting of the stockholders
of the said corporation, duly called for the purpose, and by the
affirmative vote of shares of the preferred stock
and shares of the common stock of said corpora-

tion, being at least a majority of all the stock outstanding and entitled to vote, the following amendment authorizing a reduction in the capital stock of said corporation was duly adopted, namely :

ARTICLE II. [Here insert an exact copy of the vote or votes authorizing the reduction.]

ARTICLE III. That the total amount of capital stock already authorized is

{ shares preferred.
 { shares common.

The amount of capital stock already issued is

{ shares preferred.
 { shares common.

That the amount of reduction of capital stock now authorized by the stockholders is

The manner in which said reduction will be effected is as follows :—

IN WITNESS WHEREOF, we have hereunto signed our names,
 this day of in the year nineteen
 hundred and

COMMONWEALTH OF MASSACHUSETTS.

ss.

19

Then personally appeared the above-named

and severally made oath that the foregoing certificate, by them subscribed, is true, to the best of their knowledge and belief.

Before me,

Justice of the Peace.

CERTIFICATION.

Filed in the office of the secretary of the commonwealth,
 19

I hereby approve the within certificate, this
 day of A. D. nineteen hundred and

Commissioner of Corporations.

FORM 22.

CERTIFICATE OF CONDITION (DOMESTIC CORPORATION).

[OFFICIAL FORM.]

(Acts of 1903, c. 437.)

SECTION 45. Every corporation shall annually, within thirty days after the date fixed in its by-laws for its annual meeting last preceding the date of such report, or within thirty days after the final adjournment of said meeting, but not more than three months after the date so fixed for said meeting, prepare a report of condition which shall be signed and sworn to by its president, treasurer, and at least a majority of its directors.

It is expected that this blank can be readily filled from the report of affairs made to the stockholders at their annual meeting.

Corporations with a capital of \$100,000 or more must appoint an auditor to certify the certificate. See chapter 437, section 47. The fee for filing this certificate is \$5.00, and should accompany the certificate. Checks should be made payable to the order of the secretary of the commonwealth.

We, president, treasurer, and

being a majority of the directors of the in compliance with the provisions of Chapter 437 of the Acts of 1903, and all acts in amendment thereof and in addition thereto, do hereby certify

1. That the name of said corporation is
2. That the location of its principal office in this Commonwealth is no. street [city or town],
and outside this Commonwealth, No. street
[city or town], State of
3. That the date of its last preceding annual meeting was
4. That the total amount of its authorized capital stock is

The amount issued and outstanding at said date was
 shares preferred
 shares common

The amount then paid thereon was { preferred dollars.
 { common dollars.

That said capital stock is divided into
 shares, of which shares are preferred and
 shares common, and the par value of said
 stock is { preferred dollars.
 common dollars.

5. That the assets and liabilities of the corporation at the date
 of the end of its last fiscal year were as follows : —

[Insert here date of end of fiscal year.]

ASSETS.			LIABILITIES.		
Real estate	\$		Capital stock	\$	
Machinery			Accounts payable		
Merchandise :			Funded indebtedness . .		
Manufactures, merchan-			Floating indebtedness . .		
dise, material and stock			Surplus		
in process			Profit and loss		
Cash and debts receivable .					
Patent rights					
Trade marks					
Good will					
Profit and loss					
Total			Total		

6. That the names and addresses of all the directors and
 officers of the corporation and the date at which the
 term of office of each expires are as follows : —

NAME OF OFFICE.	NAMES.	ADDRESSES.	EXPIRATION OF TERM OF OFFICE.
-----------------	--------	------------	----------------------------------

IN WITNESS WHEREOF, we have hereto signed our names, this
 day of in the year nineteen hundred and

COMMONWEALTH OF MASSACHUSETTS.

ss.

19

Then personally appeared the above-named

and severally made oath that the foregoing certificate, by them
 subscribed, is true, to the best of their knowledge and belief.

Before me,

Justice of the Peace.

If out of Massachusetts, oath may be taken before a commissioner for Massachusetts, or notary public; if within Massachusetts, before a notary public or justice of the peace.

I, _____ of _____ the duly selected auditor of a corporation duly established by law, hereby certify that I have completed the examination of the books of said corporation, and its certificate of condition as executed by its officers, to which this certificate is attached, and find that said certificate represents the true condition of the affairs of said corporation as disclosed by its books. This certificate is made by me in compliance with the provisions of section 47 of chapter 437 of the Acts of 1903.

Auditor.

COMMONWEALTH OF MASSACHUSETTS.

ss.

19

Then personally appeared the above-named _____ and made oath that the above certificate by him subscribed is true.

Before me,

Justice of the Peace.

CERTIFICATION.

Filed in the office of the secretary of the commonwealth,
19

I hereby approve the within certificate, this _____ day of
A. D. nineteen hundred and _____

Commissioner of Corporations.

FORM 23.

APPOINTMENT OF AUDITOR.

[OFFICIAL FORM.]

(St. 1903, c. 437, § 47.)

The undersigned stockholders,¹ a committee selected at the annual meeting of

¹ Selection of auditor to be made by three stockholders who are not directors, if there are so many; otherwise, by the directors. Auditors must be sworn before a justice of the peace or other magistrate authorized to administer oaths.

a corporation with a capital of \$100,000, or more, held at
 on the day of A. D. 19 have on the day
 of A. D. 19 employed of as
 auditor pursuant to the provisions of section 47 of chapter 437
 of the Acts of 1903.

} *Stockholders*
 or
 } *Directors.*

STATE OF

ss.

19

Then personally appeared the above-named and
 made oath that he would faithfully perform the duties of auditor
 of the aforesaid corporation, as required by section 47 of chap-
 ter 437 of the Acts of 1903.

FORM 24.

PETITION FOR DISSOLUTION.

(St. 1903, c. 407, § 51.)

COMMONWEALTH OF MASSACHUSETTS.

Suffolk, ss. :
 Supreme Judicial Court.

In the matter of The

Company.

PETITION FOR DISSOLUTION.

To the Honorable the Justice of the Supreme Judicial Court
 within and for the County of Suffolk :

RESPECTFULLY REPRESENTS the undersigned petitioners :

First. The Company is a corporation duly or-
 ganized under for the purpose of in
 the city of

Said corporation carried on its business at in the
 county of

Second. The capital stock of said corporation consists of
 shares of the par value of dollars
 each. The undersigned are a majority in number of the stock-

holders, and are the owners of a majority in interest of the stock in said corporation, to wit, of shares thereof.

Third. Said corporation has no outstanding debts or liabilities; it has ceased to carry on its business and has sold all its property and distributed all its assets.

Fourth. The petitioners are desirous for the foregoing reason to close the concerns of said corporation.

WHEREFORE the petitioners pray that for the reasonable cause aforesaid, this honorable court will decree a dissolution of said corporation.

FORM 25.

APPOINTMENT OF ATTORNEY.

[OFFICIAL FORM.]

(St. 1903, c. 437, § 58.)

KNOW ALL MEN BY THESE PRESENTS, That the
a corporation located in the of in the
State of and established under the laws of said
State, desiring to transact business in the Commonwealth of
Massachusetts in conformity with the laws thereof, hereby
constitutes and appoints the commissioner of corporations of
said Commonwealth, or his successor in office, to be the true
and lawful attorney of said corporation, in and for the said
Commonwealth, upon whom all lawful processes in any action
or proceeding against said corporation in said Commonwealth
may be served, in like manner and with the same effect as if
said corporation existed therein. And the said corporation
hereby stipulates and agrees, that any lawful process against
said corporation, which is served on its said attorney, shall be
of the same legal force and validity as if served on said
corporation.

This appointment and the authority of said attorney shall
continue in force so long as any liability remains outstanding
against said corporation in said Commonwealth.

IN WITNESS WHEREOF, the aforesaid corporation, pursuant to
a resolution of its board of directors, duly passed on the
day of A. D. 19 (a certified copy whereof is hereto an-
nexed), hath caused these presents to be subscribed by its

with the same effect as if this corporation existed therein. And this corporation hereby stipulates and agrees that any lawful process against it, which is served on its said attorney, shall be of the same legal force and validity as if served on this corporation. This appointment, and the authority of said attorney, shall continue in force so long as any liability remains outstanding against this corporation in said commonwealth; and the president and clerk or *secretary* are hereby authorized to execute, in the name of the corporation, and under its corporate seal, a certificate of authority or power of attorney to the said commissioner of corporations, in conformity with this resolution and the laws of said Commonwealth."

I HEREBY CERTIFY, that the above is a true copy of the resolution of the directors of this corporation, authorizing the appointment of an attorney for the Commonwealth of Massachusetts, as recorded by me.

Clerk [or Secretary].

FORM 26.

CERTIFICATE OF FOREIGN CORPORATION.

[OFFICIAL FORM.]

(St. 1908, c. 487, § 60.)

We, _____ president, _____ treasurer,
and _____

being a majority of the directors of
a corporation organized under the laws of
in compliance with the provisions of chapter 437 of the Acts of
1903, do hereby certify as follows concerning said corporation:

1. That the name of said corporation is
2. That the location of its principal office is
3. That the names and addresses of its officers are as follows :

NAME.

ADDRESS.

**President,
Treasurer,
Clerk or Secretary,
Directors,**

STATE OF

} ss.

19

Then personally appeared the above-named

and severally made oath that the foregoing certificate, by them subscribed, is true to the best of their knowledge and belief.

Before me,

If out of Massachusetts, oath before a commissioner for Massachusetts or notary public; if within Massachusetts, before a notary public or justice of the peace.

FORM 27.

CERTIFICATE OF INCREASE OF CAPITAL (FOREIGN CORPORATION).

[OFFICIAL FORM.]

(St. 1903, c. 437, § 65.)

We,
and

president,

treasurer,

being a majority of the directors of
a corporation organized under the laws of the State of
in compliance with the provisions of chapter
437, section 65, of the Acts of 1903, do hereby certify that the
capital stock of said corporation has been increased by the
amount of dollars, and that the same has
all been paid in.

IN WITNESS WHEREOF, we have hereto signed our names this
day of in the year nineteen hundred and

COMMONWEALTH OF MASSACHUSETTS.

ss.

19

Then personally appeared the above-named

and severally made oath that the foregoing certificate, by them subscribed, is true, to the best of their knowledge and belief.

Before me,

CERTIFICATION.

Filed in the office of the secretary of the commonwealth,
19

I hereby approve the within certificate, this day of
A. D. nineteen hundred and

Commissioner of Corporations.

FORM 28.

CERTIFICATE OF DECREASE OF CAPITAL
(FOREIGN CORPORATION).

[OFFICIAL FORM.]

(St. 1903, c. 437, § 65.)

I, clerk of
a corporation organized under the laws of the State of
in compliance with the provisions of chapter 437,
section 65, of the Acts of 1903, hereby certify that the following
is a true copy of the vote authorizing a reduction of the capital
stock of said corporation : —

At a legal meeting of the stockholders of
held on the day of A. D. 19 it was
Voted :

IN WITNESS WHEREOF, I have hereto signed my name, this
day of in the year nineteen hundred and

COMMONWEALTH OF MASSACHUSETTS.

ss.

19

Then personally appeared the above-named

and made oath that the foregoing certificate, by him subscribed,
is true, to the best of his knowledge and belief.

Before me,

Justice of the Peace.

CERTIFICATION.

Filed in the office of the secretary of the commonwealth,
19

I hereby approve the within certificate, this
A. D. nineteen hundred and

Commissioner of Corporations.

FORM 29.

CERTIFICATE OF CONDITION (FOREIGN CORPORATION).

[OFFICIAL FORM.]

Post-office address of company in Massachusetts :

[Acts of 1903, Chap. 437.]

SECTIONS 58 and 66. Every foreign corporation which has a usual place of business in this commonwealth, or which is engaged in this commonwealth, permanently or temporarily, and with or without a usual place of business therein, in the construction, erection, alteration or repair of a building, bridge, railroad, railway or structure of any kind, shall annually within thirty days after the date fixed for its annual meeting last preceding the date of such certificate, or within thirty days after the final adjournment of said meeting, but not more than three months after the date so fixed for said meeting, prepare and file in the office of the secretary of the commonwealth, upon payment of the fee hereinafter provided, a certificate signed and sworn to by its president, treasurer and by a majority of its board of directors showing the amount of its authorized capital stock, and its assets and liabilities as of a date not more than sixty days prior to said annual meeting, in such form as is required of domestic corporations under the provisions of section forty-five, and the change or changes, if any, in the other particulars included in the certificate required by section sixty made since the filing of said certificate or of the last annual report.

SECTION 67. A certificate which is required to be filed by the preceding section shall be accompanied by a written statement under oath by an auditor, as provided in section forty-seven, except that such auditor shall in all cases be chosen by the board of directors. Before it is filed, it shall be submitted to the commissioner of corporations, together with the evidences of the payment of any taxes which may have been assessed upon the corporation by any city or town in the commonwealth for the year last preceding. The commissioner of corporations shall examine said certificate and said evidences and shall, as tax commissioner, assess upon the corporation an excise tax, if any is due, in accordance with the provisions of section seventy-five. If he finds that the certificate is in compliance with the requirements of the preceding section, he shall indorse his approval thereon ;

but no certificate shall be filed until he has indorsed his approval thereon and until the excise tax required by section seventy-five, if any is due, has been paid to the treasurer and receiver-general.

SECTION 68. A foreign corporation of the classes described in section fifty-eight, which omits to file the certificate required by section sixty-six, shall forfeit to the commonwealth not less than five nor more than ten dollars for each day for fifteen days after the expiration of the period therein named, and not less than ten nor more than two hundred dollars for each day thereafter, during which such omission continues, which shall be recovered as provided in section fifty.

SECTION 90. The fee for filing this certificate is \$5.00, and should accompany the certificate. Checks should be made payable to the secretary of the commonwealth.

We, President, Treasurer,
and

being a majority of the directors of
a corporation organized under the laws of the State of
having a usual place of business in
in the Commonwealth of Massachusetts, in compliance with the
provisions of chapter 437 of the Acts of 1903, do hereby certify,
that the amount of its authorized capital stock on the
day of 19 was . dollars.

That the assets and liabilities of the corporation on the above
date were as follows : —

(NOTE. — This should be of a date not more than sixty days prior to the annual meeting.)

ASSETS.		LIABILITIES.	
Real estate	\$	Capital stock	\$
Machinery		Accounts payable	
Merchandise :		Funded indebtedness	
Manufactures, merchan-		Floating indebtedness	
dise, material and stock		Surplus	
in process		Profit and loss	
Cash and debts receivable .			
Patent rights			
Trade marks			
Good will			
Profit and loss			
Total		Total	

State here the change or changes, if any, since the filing of
the certificate required by section 60, or since the filing of the
last annual report, in the following particulars : —

¹ State the nature of such services and expenses.

IN WITNESS WHEREOF, we have hereunto signed our names,
this day of in the year nineteen hundred
and

STATE OF

} ss.

19

Then personally appeared the above-named

and severally made oath that the foregoing certificate, by them
subscribed, is true to the best of their knowledge and belief.

Before me,¹

AUDITOR'S CERTIFICATE.

(This certificate is to be used only by corporations having a paid-in capital
of \$100,000, or over.)

19

I, of the duly selected auditor
of a Corporation duly
established by law, hereby certify that I have completed the
examination of the books of said corporation, and its certificate
of condition as executed by its officers, to which this certificate
is attached, and find that said certificate represents the true
condition of the affairs of said corporation as disclosed by its
books. This certificate is made by me in compliance with the
provisions of section 47 of chapter 437 of the Acts of 1903.

Auditor.

COMMONWEALTH OF MASSACHUSETTS.

ss.

19

Then personally appeared the above-named
and made oath that the above certificate by him subscribed is
true.

Before me,

Justice of the Peace.

¹ If out of Massachusetts, oath before a commissioner for Massachusetts
or notary public; if within Massachusetts, before a notary public or justice
of the peace.

CERTIFICATION.

The treasurer and receiver general hereby certifies that the tax provided in section 75, chapter 487, of the Acts of 1903 has been paid.

Date,

Treasurer and Receiver General,
by

Filed in the office of the secretary of the commonwealth,
19

I hereby approve the within certificate, this day of
A. D. nineteen hundred and

Commissioner of Corporations.

FORM 30.

APPOINTMENT OF AUDITOR (FOREIGN CORPORATION).

[OFFICIAL FORM.]

(St. 1903, c. 487, § 67.)

The undersigned, board of directors of
a corporation with a capital of \$100,000, or more, at a meeting
held at on the day of A. D.
19 have employed of
as auditor pursuant to the provisions of section 67 of chapter
487 of the Acts of 1903.

} *Directors.*

STATE OF

ss.

19

Then personally appeared the above-named
and made oath that he would faithfully perform the duties of
auditor of the aforesaid corporation, as required by section 67
of chapter 487 of the Acts of 1703.

Before me,

If in the State, oath may be taken before a justice of the peace or other
magistrate authorized to administer oaths; if out of the State, before a
commissioner for Massachusetts or notary public.

FORM 31.

MINUTES OF FIRST MEETING OF BOARD OF DIRECTORS.

The first meeting of the board of directors elected by the incorporators of _____ Company, was held at the office of the corporation, No. _____ Street, _____ Massachusetts, on _____, 19____, at _____ o'clock in the _____ noon.

Present :

being _____ the directors of the corporation.

Upon motion, duly made and seconded, Mr. _____ was elected chairman of the meeting until the election of the president.

The clerk presented and read the following waiver of notice of the meeting, which was ordered to be filed with the records of the directors : —

WAIVER OF NOTICE OF FIRST MEETING OF DIRECTORS.

We, the undersigned, being all the members of the board of directors elected by the incorporators of _____ Company, hereby waive notice of the time and place of the first meeting of the said board of directors, and of the business to be transacted at said meeting.

We designate the _____ day of _____, 19____, at _____ o'clock in the _____ noon as the time, and the office of the corporation, No. _____

Street, _____ Massachusetts, as the place of said meeting, the purpose of said meeting being to elect officers ; to authorize the issue of the stock of the corporation ; to authorize the purchase of property necessary for the business of the corporation ; and to transact such other business as may be necessary or advisable to complete its organization and to facilitate the carrying on of its contemplated business.

Dated _____ 19____

Upon motion, duly made and seconded, it was

Voted, to proceed by ballot to the election of a president

of the corporation. The whole number of ballots cast was _____ of which _____ were for _____ who was declared elected, and thereupon accepted his election, and thereafter presided at the meeting.

Upon motion, duly made and seconded, it was

Voted, to proceed by ballot to the election of a vice-president of the corporation. The whole number of ballots was _____ of which _____ were for _____ who was declared elected, and thereupon accepted his election and entered upon the discharge of the duties of his office.

Upon motion, duly made and seconded, it was

Voted, to adopt the following as the form and style of the certificates to be issued for the stock of the corporation : —

Upon motion, duly made and seconded, it was

Voted, to adopt as the seal of the corporation the seal presented at this meeting, an impression of which is hereby directed to be made in the margin of the records of this proceeding.

Upon motion, duly made and seconded, it was

Voted, that the treasurer be and he is hereby directed to forthwith furnish and deliver to the clerk of the corporation a bond, in such form as may be approved by the president, in the penal sum of _____ dollars, to be executed by _____ as surety, to secure the full and faithful performance by the said treasurer of the duties of his office.

Upon motion, duly made and seconded, it was

Voted, that the treasurer be and he is hereby directed to open an account in the name and on behalf of the corporation with the _____ Bank of _____ which is hereby authorized to make payments from funds of the corporation on deposit with said bank upon presentation of checks signed by the _____ of this corporation.

Upon motion, duly made and seconded, it was

Voted, to accept the subscriptions of

the incorporators of this corporation for the amount of stock subscribed for by each of them, the said shares to be paid for in full in the manner following : —

transfer books of the corporation, which shall contain a complete list of all stockholders, their residences and the amount of stock held by each,¹] shall be kept by its
at the principal office of the corporation, No. Street,
Massachusetts, for the inspection of such of the
stockholders and other persons interested in the affairs of the
corporation as may be entitled by law to examine the said books
and records.

No further business being brought before the meeting, it was
Voted, to adjourn.

Clerk.

PURPOSES OF INCORPORATION.

FORM 32.

AGRICULTURAL MACHINERY.

To manufacture any and all kinds, classes, and descriptions of agricultural, horticultural, farming, and garden tools, implements, machines, and utensils for domestic and other purposes, and any and all articles consisting or partly consisting of metal, wood, or other materials, and all or any products thereof, and to buy or sell or otherwise to deal or traffic in any such or any like manufacture, products, and articles, and the constituent parts and elements thereof.

FORM 33.

CONFECTIONERY.

To manufacture or otherwise acquire, buy, sell, and deal in confectionery, confectioners' supplies, merchandise, and machinery, inventions, designs, formulas, and recipes of any and all kinds which are used, designed, or adapted for use by confectioners.

FORM 34.

CORDAGE AND TWINE.

To manufacture and sell cordage and binder twine, and any and all similar commodities, and to acquire in any manner all

¹ If a transfer agent is employed this clause may be omitted or changed to accord with the facts.

materials, supplies, machinery, and other articles which are necessary or convenient for use in connection with and in carrying on the manufacture and sale of said commodities.

FORM 35.

COTTON AND MACHINERY.

To carry on the business of manufacturing, acquiring, owning, using, operating, repairing, dealing in and disposing of, whether as principals, owners, agents, factors, or in any other capacity, machines, machinery, tools, and mechanical and other devices and appliances for handling and compressing cotton, hay, wool, hemp, sisal, and all other fibrous and other material; with full power and right in any capacity to manufacture, acquire, produce, own, hold, deal in, compress, market, and in any way dispose of cotton, hay, wool, hemp, sisal, and all other articles, products, crops, materials, and commodities, raw, wrought, or in process, and real estate and personal property of all kinds incidental or convenient to said purposes and business, and any interests therein. And with the right to acquire in any manner any vessels, ships, or boats, or any interest in the same, and control and operate the same for carriage or transportation.

FORM 36.

ELECTRICAL MACHINERY.

To manufacture, buy, sell, lease, and use machinery, generators, motors, lamps, apparatus, devices, supplies, and articles of every kind appertaining to or in any wise connected with the production, use, distribution, regulation, control, or application of electricity or electrical apparatus for the purpose of light, heat, power, locomotion, telephony, telegraphy, metallurgy, or for any other use or purpose; to construct, acquire, use, sell, buy, or lease any works, construction or plant, or part thereof, connected with or involving such use, distribution, regulation, control, or application of electricity, or the control or use of electrical apparatus for any purpose; and to produce, furnish, and supply electricity or electrical apparatus in any form and

for any purpose whatsoever, and generally to manufacture, buy, sell, lease, and use machines, engines, mechanical devices, and articles of every other character, and to carry on a general manufacturing business.

FORM 37.

GENERAL CONTRACTING.

To conduct and carry on the business of builders and contractors for the purpose of building, rebuilding, altering, repairing, or doing any other work in connection with any and all classes of factories, buildings, works, or erections of every kind and description whatsoever, and locating, laying out, and constructing roads, avenues, docks, slips, bridges, wells, walls, railroads, or street railways, power plants, and any and all classes of buildings and erections, to perform engineering and architectural work, including the preparation of plans and specifications, and expert work, as acting, consulting, and superintending engineers and architects, to superintend the erection, locating, building, completing, preparing, furnishing, and equipment in whole or part of any or all works, buildings, erections, and improvements whatsoever, and generally to perform any and all work as builders and contractors, and to solicit, make, and perform contracts covering the building and contracting business, and the work connected therewith.

FORM 38.

GENERAL MERCHANDISE.

To buy and sell groceries, meats, provisions, fruit, and vegetables, woodwork, tinware and crockery ware, patent and proprietary medicines, furniture and household effects, cigars, tobacco, and pipes, wrapping paper and paper bags.

FORM 39.

HOSE AND TIRES.

To manufacture, buy, or sell woven hose or piping and fire hose, garden hose and lawn hose, belting, duck and canvas

goods, flexible tubing, rubber tires, and appliances which are used in connection with said articles or any of them, and any articles or products made or compounded wholly or in part of rubber or leather, and supplies and wares for bicycles, carriages, or other vehicles.

FORM 40.

HOTELS.

To carry on the business of building, erecting, buying, leasing, managing, controlling, and renting hotels, and carrying on a hotel business.

FORM 41.

LEATHER.

To carry on the business of tanning and currying of all kinds ; to manufacture, cure, and trade in skins, hides, and leathers of all kinds, and to trade in all articles and products in the manufacture or composition of which hide, skin, or leather is an ingredient ; to make, purchase, and sell manufactured articles made partly or wholly from hide, skin, or leather of any kind, and all like products ; to acquire and dispose of rights, to make and use the same ; to slaughter animals, and to pack, preserve, buy, sell, and deal in and with the constituent parts of animals and animal products, and to manufacture and deal in any and all articles and products in the manufacture or composition whereof said parts of animals and animal products are ingredients ; to make, purchase, and sell such other products or merchandise as may be conveniently or advantageously used or sold in connection with said skins, hides, leathers, and animal products, and said business, or any part thereof.

FORM 42.

LIVE-STOCK AND AGRICULTURAL PRODUCTS.

To carry on a general mercantile business, and particularly to buy, sell, and deal in cattle, hogs, sheep, poultry, and other live-stock, grain, butter, eggs, and other agricultural or dairy

products, manufactured or prepared articles producing or resulting from, or embodying in whole or in part, slaughtered live-stock or agricultural products; to lease, purchase, hold, erect, equip, operate, and maintain packing-houses, factories, mills, stock-yards, office buildings, warehouses, salesrooms, branch establishments, grain elevators, scales, mines, vessels and other craft, refrigerator and other cars, and other rolling-stock or vehicles or means of transportation (but not to be a railroad or other public service corporation), icehouses, refrigerating and printing establishments; and to sell, or otherwise dispose of, any of the aforesaid properties and appliances, and the proceeds, products, use, or contents thereof.

FORM 43.

LUMBER.

To carry on and conduct the business of lumbering in all its branches, and all other business which may be useful or profitable as incidents thereto, and for that purpose to purchase, hold, possess, and own any property, real or personal, which may be necessary or convenient for the prosecution of said business, and generally to do all things incidental to said business or connected therewith.

FORM 44.

MACHINERY AND SHOES.

To manufacture, buy, sell, lease, operate, and deal in all kinds of machinery, tools, implements, and mechanical devices and contrivances of every name and nature whatsoever, and especially to manufacture, buy, sell, lease, operate, and deal in all kinds of boot and shoe machinery, and every kind of mechanism, contrivance, implement, tool, material, or thing in any way whatsoever connected with or used in connection with the manufacture of boots, shoes, and foot-wear, or the manufacture of leather and rubber goods, or goods made from materials and fabrics of any description whatsoever, and especially in connection with the manufacture or operation of any of the machinery, mechanical devices, or contrivances hereinbefore mentioned; to produce, prepare, and manufacture, to buy, sell, and deal in

leather and rubber, and materials and fabrics of all sorts, and the raw materials from which said leather, rubber, materials, or fabrics are produced; to manufacture, buy, sell, and deal in boots, shoes, and footwear, and all articles and things of every description which may be produced or manufactured, in whole or in part, from leather, rubber, or any other materials or fabrics; and in general to produce, prepare, manufacture, and deal in goods, wares, merchandise, property, materials, and things of every class and description.

FORM 45.

MERCANTILE AND CLOTHING.

To transact and conduct a general mercantile business in the United States of America and elsewhere, and especially the business of importing and exporting, manufacturing, buying, and selling clothing, and also such other articles of commerce as the said corporation may deem advisable.

FORM 46.

METAL GOODS.

To manufacture and trade in steel, iron, and other metals; to make, purchase, and sell manufactured articles made partly or wholly from metals of any kind, and all like or kindred products; to acquire and dispose of rights to make and use the same; to make, purchase, and sell such other products or merchandise as may be conveniently or advantageously used or sold in connection with said metals and business.

FORM 47.

MINING.

To engage in the mining of copper, iron, and silver, or other ores or minerals, and to acquire, hold, sell, or convey all property, real and personal, necessary or convenient for carrying on the same, and for doing all acts and the exercise of all the power necessary, usual, or incidental to the carrying on of the said business, or any part thereof, not contrary to the laws of the Commonwealth of Massachusetts.

FORM 48.**PUBLISHING.**

To carry on the business of buying, selling, printing, publishing, and dealing in books, papers, magazines, and other publications of any and every kind; to buy, hold, sell, lease, mortgage, convey, manufacture, and deal in merchandise, works of art, machinery, and rights of all kinds.

FORM 49.**QUARRY.**

To purchase, or otherwise acquire and hold, develop, and operate stone quarries, and all apparatus and appliances for preparing the various forms of stone for sale and use; and to quarry, cut, dress, carve, and otherwise fashion granite and other kinds of stone; and to sell, export, or otherwise dispose of all such forms of granite and other kinds of stone.

FORM 50.**SEWING-MACHINES.**

To manufacture sewing-machines and other manufactures, and goods composed of metal or wood, or of which metal or wood is a constituent part, and to do such other things as are incidental to or necessary in the prosecution of such business, and for mercantile purposes.

FORM 51.**RUBBER GOODS.**

To make, purchase, and sell rubber boots and shoes, and all goods of which rubber is a component part, and the various materials entering into the manufacture of any and all such goods, and also to acquire and dispose of rights to make and use any and all such goods and materials, and to do and transact all acts, business, and things incident to or relating to or convenient in carrying out its business as aforesaid which are authorized by law.

FORM 52.

TEXTILE MACHINERY.

To manufacture, sell, and deal in rotary spinning or twisting rings, travellers, and other appliances to be used in connection with the same ; also to manufacture, sell, and deal in any machinery, apparatus, appliances, or devices to be used in connection with the manufacture of any kind of textiles.

FORM 53.

TYPEWRITING MACHINERY.

To produce, purchase, develop, and perfect new inventions, devices, and improvements in, or pertaining to, typewriting machines and typewriter supplies and appliances.

POWERS OF CORPORATION.

FORM 54.

TO ACQUIRE PROPERTY.

To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property, rights, or privileges suitable or convenient for any of the purposes of its business, and to purchase, acquire, erect, and construct, make, improve, or aid, or subscribe towards the construction, making, and improvement of buildings or machinery, stores or works, in so far as the same may be appurtenant to or useful for the conduct of the business of the corporation, as above specified, but only to the extent to which the corporation may be authorized under the laws of the Commonwealth of Massachusetts.

FORM 55.

TO ACQUIRE PROPERTY AND REDEEM BONDS.

The corporation may use and apply its surplus property, earnings, or accumulated profits, to the purchase and acquisi-

tion of property, or to the redemption or payment of bonds of the corporation, or of bonds secured by mortgages upon any chattels or personal or real property owned by the corporation, or any debt due to the corporation, from time to time and to such extent and in such manner and upon such terms as its board of directors shall determine; and neither the property nor the capital stock taken in payment or consideration of any debt due to the corporation shall be considered as profits for the purpose of declaring or paying dividends.

FORM 56.

TO CARRY ON OTHER BUSINESS.

To carry on any other lawful business which may seem to the corporation capable of being conveniently carried on in connection with the above purposes, or calculated directly or indirectly to enhance the value of or render profitable any of the corporation's property or rights.

FORM 57.

TO ACQUIRE PATENTS.

To apply for, purchase, or otherwise acquire and to hold, own, use, operate, and to sell, assign, license, or otherwise dispose of any and all inventions, improvements, and processes and letters patent of the United States or of any foreign country, or any rights, title, or interest in or to the same or any of them.

FORM 58.

TO ACQUIRE OTHER PROPERTY, INCLUDING PROPERTY CONNECTED WITH PUBLIC SERVICE BUSINESS OUTSIDE THE STATE.

To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property rights, franchises, or privileges which the corporation may think suitable or convenient for any purpose of its business. And to erect, equip, and construct buildings and works of all kinds; and to construct,

improve, maintain, manage, or control any roads, ways, reservoirs, watercourses, wharves, manufactories, warehouses, ships, stores, and other works and conveniences which may seem calculated directly or indirectly to advance the company's interests. And to construct, maintain, and operate steam or electric railroads, and gas or electric light, heat, and power works wholly in foreign countries and in territories and States other than the Commonwealth of Massachusetts.

FORM 59.

TO ISSUE BONDS.

To borrow or raise money without limit as to amount by the issue of bonds, debentures, and other negotiable or transferable instruments, or in any other lawful manner.

FORM 60.

TO ACQUIRE SECURITIES IN CORPORATIONS ENGAGED IN SIMILAR BUSINESS.

To acquire, own, hold, buy, sell, pledge, and dispose of shares in the capital stock, and the bonds or other securities of any corporation (other than a controlling interest of the stock of any corporation engaged in any public service business within the Commonwealth of Massachusetts) owning, leasing, using, or employing any letters patent or patent rights relating to or in any way connected with electrical apparatus or the application or use of electricity in any form, or suitable for any portion of the business of this corporation, and the stocks, bonds, and other securities of any such corporation owning, leasing, manufacturing, purchasing, using, or employing any machinery, apparatus, devices, materials, or other property of any kind relating to electrical apparatus, or the use, distribution, or application of electricity for any purpose, or for use in connection therewith, or necessary for the business of this corporation; and in respect to such shares of capital stock, to exercise all the rights, powers, and privileges which a holder, being a natural person, might have or exercise.

FORM 61.

SAME. — MANNER OF PAYMENT.

To purchase, acquire, hold, and dispose of the stocks, bonds, and other evidences of indebtedness of any corporation, domestic or foreign, engaged in a business similar to that of this corporation, or engaged in the manufacture, use, or sale of property, or in the construction or operation of works necessary or useful in or contributory to the business of this corporation or helpful thereto, or in which or in connection with which the manufactured articles, products, or property of this corporation are or may be used (other than a controlling interest of the stock of any corporation engaged in any public service business within the Commonwealth of Massachusetts), and of any corporation with which this corporation is or may be authorized to consolidate, and in exchange therefor to issue its own stock, bonds, or other obligations.

CLASSIFICATION OF STOCK.

FORM 62.

PREFERRED STOCK. — NON-CUMULATIVE. —
LIMITED IN AMOUNT.

The stock of the corporation shall be of two kinds, viz., common stock and preferred stock. The amount of the preferred stock shall at no time exceed one-half of the total outstanding capital stock of the corporation. The holders of the preferred stock shall be entitled to receive semi-annually all net earnings of the corporation determined and declared as dividends in each fiscal year up to but not exceeding per cent per annum upon all outstanding preferred stock before any dividend shall be set apart or paid on the common stock; but such dividends upon the preferred stock shall not be cumulative, and the preferred stock shall not be entitled to participate in any other or additional earning or profits. In case of liquidation or dissolution of the corporation, the holders of preferred

stock shall be entitled to receive cash to the amount of their preferred stock at par before any payment in liquidation is made upon the common stock, and shall not thereafter participate in any of the property of the corporation or proceeds of liquidation.

FORM 63.

CUMULATIVE PREFERRED STOCK AS TO DIVIDENDS.

The preferred stock shall be entitled, out of the surplus net earnings, after all amounts which may be determined upon have been reserved as working capital, to a fixed cumulative preferential dividend at a rate not exceeding per cent per annum on the par value of said stock, and such dividends shall be declared quarterly in January, April, July, and October of each year, unless some specific day or days for that purpose shall be fixed by the by-laws. If, in any year, dividends amounting to per cent per annum shall not be paid on such preferred stock, the deficiency shall be a charge on said net earnings over and above the amount reserved as working capital, and be payable, with interest, before any dividends shall be paid upon or set apart for the common stock. In the event of the dissolution of the corporation, or the distribution of its assets, the holders of the preferred stock and holders of the common stock shall equally share the proceeds of such dissolution or distribution.

The common stock shall be subject to the prior rights of the preferred stock, as herein declared, but the shares of preferred and common stock shall have equal voting power.

If, after appropriating the accumulated profits of the corporation, in excess of the amount reserved as working capital, to such dividends on the preferred stock of the corporation as may be required, there remains further accumulated capital, the directors shall quarterly in January, April, July, and October of each year, unless some specific day or days for that purpose be fixed in the by-laws, declare a dividend of said profits on the common stock.

FORM 64.

CUMULATIVE PREFERRED STOCK AS TO DIVIDENDS
AND UPON DISSOLUTION. — SHORT FORM.

The holders of preferred stock shall be entitled to receive in each year, out of the surplus net profits of the corporation, a yearly dividend of per cent, payable quarterly in January, April, July, and October if declared, before any dividend shall be set apart or paid on the common stock, but they shall not be entitled to any further dividend. The dividends upon the preferred stock shall be cumulative, so that, if in any year dividends amounting to per cent are not paid on the preferred stock, the deficiency shall be payable subsequently, before any dividends are set apart or paid upon the common stock. Dividends on the common stock may also be declared quarterly in said months after providing for the quarterly dividend on the preferred stock then accrued. The holders of common stock shall be entitled to receive all moneys appropriated to dividends after the payment of said cumulative dividends on the preferred stock. In case of liquidation or dissolution of the corporation, the holders of preferred stock will be entitled to be paid in full both the principal of their shares and the accrued dividend charge before any amount is paid to the holders of common stock; but, after such payment to the holders of the preferred stock at its par value, the remaining assets and funds shall be divided pro rata among the holders of both classes of stock.

FORM 65.

CUMULATIVE PREFERRED STOCK AS TO DIVIDENDS
AND UPON DISSOLUTION. — FULL FORM.

The holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of per cent per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart; so that, if in any year

dividends amounting to per cent shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly instalments for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years, and such accrued quarterly instalments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits; provided, however, that no dividend shall at any time be declared or paid on the common stock, unless there shall remain, exclusive of such dividend, net profits or surplus of not less than dollars.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full, both the par amount of their shares and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the common stock, and after the payment to the holders of the preferred stock of its par value and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock.

FORM 66.

PREFERRED STOCK. — CLASSIFICATION.

The capital stock of the corporation shall consist of two kinds, — common stock and preferred stock.

The common stock shall consist of shares of the par value of each.

The preferred stock shall consist of shares of first preferred stock, of the par value of each, and shares of second preferred stock, of the par value of each.

The first preferred stock shall be entitled to a cumulative preferential dividend, at the rate of per cent per annum, payable out of the earnings of the corporation before any divi-

dend is set apart or paid on the second preferred stock or on the common stock. The first preferred stock shall be entitled to be first paid at its face value upon dissolution.

The second preferred stock shall be entitled to a cumulative preferential dividend, at the rate of per cent. per annum, payable out of the earnings of the corporation after the payment of the aforesaid dividend on the first preferred stock, and before any dividend is set apart or paid on the common stock. The second preferred stock shall be entitled to be paid at its face value out of the property and assets of the corporation upon its dissolution after the payment at its face value of the first preferred stock, and before the payment of the common stock.

The common stock shall be entitled to the surplus earnings of the corporation when declared in dividends after the aforesaid dividends upon the first and second preferred stock are paid; and shall also be entitled upon dissolution to whatever property and assets of the corporation remain after the payment of the first and second preferred stock as aforesaid.

FORM 67.

PREFERRED STOCK.—LIMITED IN TIME.—SHORT FORM.

The preferred stock shall be entitled to a dividend of per cent per annum, to be declared and paid from the net profits of the corporation before any dividend is declared and paid upon the common stock. But said preference shall cease on the first day of and on and after that date said preferred stock shall become and be deemed and treated as common stock.

FORM 68.

CUMULATIVE PREFERRED STOCK.—LIMITED IN AMOUNT.

The capital stock shall be of two classes,—preferred stock and common stock. dollars par value of the capital stock may be preferred stock, but the total amount of preferred stock shall not exceed two-thirds of the actual capital paid in cash or property.

The power to fix the amount to be reserved as a working capital for the corporation is hereby given to the directors, and the right to dividends from profits shall be subject thereto.

The preferred stock shall receive dividends at a rate not exceeding per cent per annum. Such dividends shall be cumulative, and if the profits of one year declarable as dividends shall not be sufficient to pay such dividends for such year, at the rate of per cent per annum upon said preferred stock, then the same shall be made up from profits of a later period until the full amount of dividends herein specified, without interest, shall have been paid upon the preferred stock before any dividend is declarable on the common stock. The balance of the profits of the corporation declarable as dividends shall be distributed among the holders of the common stock.

The par value of the preferred stock and accrued and unpaid dividends shall, in the event of the dissolution of the company and division of its assets, be paid in full before any sum whatever shall be paid on account of the common stock, and thereafter the common stock shall be entitled to all the remaining assets.

CLASSIFICATION OF DIRECTORS.

FORM 69.

CLASSIFICATION OF DIRECTORS.¹—EACH CLASS TO HOLD OFFICE FOR FIVE YEARS.

There shall be five classes of directors, in respect to term of office, each class to contain one-fifth of the whole number of directors. The term of office of each class shall be five years, except that, upon organization, the first class shall be elected to serve until the fifth annual election thereafter, the second class to serve only until the fourth annual election thereafter, the third class until the third annual election thereafter, the fourth class to serve until the second annual election thereafter, and the fifth class until the first annual election thereafter. At each annual election after organization the successors to the class whose term then expires shall be elected to serve for the full term of five years.

¹ See also Form 18.

FORM 70.**CLASSIFICATION OF DIRECTORS. — MAJORITY OF DIRECTORS ELECTED FOR FIVE YEARS.**

There shall be two classes of directors, to be known as "Class A" and "Class B," respectively. Class A shall consist of one more than a majority of the whole number of directors as fixed at any time by the by-laws, and the term of office of directors of this class shall be five years, or, in the first instance, until the fourth annual election after the organization of the corporation. Class B shall consist of all other directors, and the term of office of directors of this class shall be one year, or, in the first instance, until the first annual election.

POWERS OF BOARD OF DIRECTORS.**FORM 71.****POWER OF BOARD OF DIRECTORS TO FIX AMOUNT OF WORKING CAPITAL AND TO SELL AND TO MORTGAGE PROPERTY.**

The board of directors shall have power without the assent or vote of the stockholders to fix the amount to be reserved as the working capital of the corporation, to authorize and to cause to be executed mortgages and liens upon the real and personal property of the corporation, and from time to time to sell, transfer, or otherwise dispose of any of the property of the corporation; provided, that the board shall not exercise the power to sell, transfer, or otherwise dispose of property exceeding in value, except pursuant to the vote of at least a majority in interest of the stockholders; and provided, further, that no sale, lease, or exchange of all of the property and assets of the corporation, including its good-will and its corporate franchise, shall be made, and no mortgage or lien upon all the property and assets of the corporation shall be executed, without the affirmative vote of at least two-thirds of all its stock then outstanding and entitled to vote.

FORM 72.**POWER OF BOARD OF DIRECTORS TO APPLY SURPLUS EARNINGS TO PURCHASE OF THE BONDS AND STOCK OF CORPORATION.**

The board of directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the corporation, and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in ; and in its discretion the board of directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations or shares of its own capital stock to such extent and in such manner and upon such terms as the board of directors shall deem expedient ; and shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the corporation's capital stock as provided by law.

FORM 73.**EXECUTIVE COMMITTEE.¹**

The directors may, by vote of a majority of the whole number, appoint three or more directors as an executive committee, of which a majority shall constitute a quorum, and which, to the extent provided in said resolution, may exercise the powers of the directors in the management of the business and affairs of the corporation. It shall have power to authorize the execution of any papers and the performance of any acts by the officers of the corporation ; it shall also have power to authorize the seal of the corporation to be affixed to any papers to which it might be affixed by authority of the directors.

FORM 74.**EXECUTIVE COMMITTEE.—FULL FORM.**

The board of directors, by vote of a majority of the whole board, may designate three or more directors to constitute an

¹ See also Form 4, Article V.

executive committee. Said executive committee shall have all the powers conferred upon it by the board of directors, and it shall have all the powers of said board when the same is not in session ; and it shall also have power to fix the number required for a quorum, to make rules for the conduct of its business, and to appoint from its members officers for its own proceedings.

All directors, irrespective of class, are eligible for membership of said committee, and any member who shall cease to be a director of the corporation shall forthwith cease to be a member of such committee. The board of directors, however, shall have no power to remove members of said committee. A vacancy in such committee occurring otherwise than by expiration of term of membership shall be filled for the unexpired term by majority vote of the remaining members of the committee, or by a vote of the majority of a quorum, with the written assent of enough absent members to make, with those voting, such majority.

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